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IN THE COURT OF COMMON PLEAS  
OF THE 37TH JUDICIAL DISTRICT OF PENNSYLVANIA  
WARREN COUNTY BRANCH- CIVIL ACTION

- - -

MATSON LUMBER COMPANY,  
Plaintiff,  
vs.  
No. A.D. 579 of 2005

ALBERT T. CARLISLE, JAMES  
HALL, JOHN MARTIN and DONALD  
F. (D.J.) HOLMES,  
Defendants.  
)  
)  
)  
)  
)

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ALBERT T. CARLISLE,  
Plaintiff,  
vs.  
No. 04-25 Erie

BARTONY, HARE & EDSON; SCOTT  
M. HARE, ESQUIRE; HENRY E.  
BARTONY, JR., ESQUIRE; and  
JOHN JOY V. EDSON, ESQUIRE,  
Defendants.  
)  
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- - -

DEPOSITION OF JOHN C. DENNISON

REPORTED BY:  
STEPHANIE MYERS - COURT REPORTER  
P.O. BOX 1332, MEADVILLE, PA 16335  
(814) 333-1545

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DEPOSITION OF JOHN C. DENNISON, a witness  
herein, called by Albert T. Carlisle, for examination,  
taken pursuant to the Pennsylvania Rules of Civil  
Procedure, by and before Stephanie Myers, a Court Reporter  
and a Notary Public in and for the Commonwealth of  
Pennsylvania, at the law offices of Dennison & Dennison,  
293 Main Street, Brookville, Pennsylvania, on February 9,  
2006, at approximately 12:04 p.m.

**COUNSEL PRESENT:**

For the Albert T.  
Carlisle:  
James R. Fryling, Esquire  
Conner, Riley & Fryling  
Bell Telephone Building  
17 West Tenth Street  
Erie, Pennsylvania 16512

For Matson:  
Robert P. Ging, Esquire  
2095 Humbert Road  
Confluence, Pennsylvania 15424

For Scott Hare:  
Amy J. Cocco, Esquire  
Weinheimer, Schadel & Haber  
602 Law & Finance Building  
429 Fourth Avenue  
Pittsburgh, Pennsylvania 15219

Also present:  
Leonard Domenick

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## P R O C E E D I N G S

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JOHN C. DENNISON, a witness

herein, having been first duly sworn, was examined and testified as follows:

## EXAMINATION

BY MR. FRYLING:

Q. Good afternoon, Mr. Dennison. My name is James Fryling, and I represent Albert T. Carlisle.

We have noticed your deposition here today on two different captions. One is a case pending in the Court of Common Pleas of the 37th Judicial District, Warren County, Matson Lumber Company versus Albert T. Carlisle, James Hall, John Martin and Donald F. (D.J.) Holmes, which has a Docket No. 579 of 2005.

We have noticed it under caption of the case pending in the United States District Court for the Western District of Pennsylvania, Albert T. Carlisle, Plaintiff, versus Bartony, Hare & Edson; Scott M. Hare, Esquire; Henry E. Bartony, Jr., Esquire; and John Joy V. Edson, Esquire, Defendants, at Docket No. 04-25, Erie.

We have noticed your deposition specifically for today. We have also noticed the deposition of a representative of Matson Lumber Company pursuant to FRCP

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30(b)(6) and Rule 4007.1(2)(e) with regard to the areas of inquiry that were listed in one through seven of that Notice.

It is my understanding, from Attorney GING, who represents Matson Lumber Company in the Warren County action, that you are being appointed or you're appearing here today not only in the individual capacity, but also as the corporate representative designated by Matson Lumber Company for purposes of answering those questions; is that correct?

A. That's correct.

Q. You have had an opportunity to review the Notice?

A. Yes.

MR. GING: For the record, Jim, we have the original Notice that you had provided us, and it had another caption on it. We don't have the final Notice. I assume they are the same.

MR. FRYLING: That was a draft of the original Notice.

MR. GING: Correct.

MR. FRYLING: And, at your request, we replaced the Warren County case caption of Carlisle versus Matson Lumber Company with the Matson Lumber Company versus Carlisle, Hall, Martin and Holmes.

MR. GING: But in terms of the content, one

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1 through seven, they are the same?

MR. FRYLING: Correct.

MR. GING: Okay.

MR. FRYLING: In fact, I have a copy of that, if you would like it.

MR. GING: Thank you.

BY MR. FRYLING:

Q. I have asked you to come here today to ask you some questions regarding Matson Lumber Company and your involvement, if any, with Matson Lumber Company.

If I ask you a question that you don't understand, please stop me, and I will reask or rephrase the question. You obviously, as a practicing attorney, you know of depositions and deposition procedures. My only word of caution would be if you can give us a verbal response to my questions as opposed to a gesture or a nod of the head, I would appreciate that, okay?

A. Okay.

Q. May I have your full name, please?

A. John C. Dennison.

Q. Mr. Dennison, what is your business address?

A. 293 Main Street, Brookville, Pennsylvania.

Q. And your occupation?

A. Attorney.

Q. Tell me a little bit about your education. Where

1 did you go high school?

A. Brookville High School.

Q. Your year of graduation?

A. 1970.

Q. Where did you go to college?

A. My first year, I went to the University of Buffalo and transferred from there and I went to Westminster College; I graduated in 1974. I stayed on an extra year and got my Master's in education. I then worked for a year at a correctional facility for juveniles and then went to law school at Valparaiso University and graduated in December of 1978.

Q. What was your undergraduate degree in?

A. History.

Q. Upon graduation in 1978, did you sit for the bar exam?

A. Yes.

Q. And you passed the bar exam?

A. Yes.

Q. And when did you begin practicing?

A. Well, 1978, in December, I came back here, so I took the bar exam in February of '79 and I passed. I got my notice, I think April 15th, 1979, and I started practicing then.

Q. You're currently with a practice now?

9

1 A. Correct.

2 Q. The name of that practice?

3 A. Dennison, Dennison and Harper.

4 Q. Is that a partnership?

5 A. Yes.

6 Q. Have you practiced with this firm since you

7 started practicing?

8 A. It's changed over the years. My brother and my

9 sister-in-law were in here until ten or so years. My

10 father has always been in here, and he died in 2002, and

11 Troy came in, I think October of 1995, Troy Harper.

12 Q. What type of practice, or how would you

13 characterize your type of practice?

14 A. We do about six or seven different things. We do

15 a lot of insurance defense work; we do estate planning; we

16 do commercial litigation, real estate, corporate law. Troy

17 does some criminal, small criminal matters and some small

18 domestic things.

19 Q. So, with the exception of small domestic things

20 and small criminal matters, your practice would involve the

21 insurance defense, estate planning, real estate and

22 corporate work?

23 A. That's basically what I work on, those four

24 areas.

25 Q. Has that generally been true for the years that

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10

1 you have been in practice?

2 A. Yes.

3 Q. With regard to your real estate practice, is that

4 residential, commercial or both?

5 A. Both.

6 Q. All right. Is it weighted more heavily towards

7 one or the other?

8 A. I can't put a percentage, but I do a lot of

9 commercial real estate work, too, buying and selling

10 motels, timber land, businesses in general, and then, plus

11 we do a lot of residential work, too.

12 Q. How long, or how many years would your practice

13 have involved commercial real estate deals involving timber

14 or timber lands?

15 A. Since the early '80s.

16 Q. In the course of your practice involving

17 commercial timber land, have you come to represent a

18 company known as Matson Hardwoods or Matson Lumber Company?

19 A. Yes.

20 Q. How long have you represented Matson?

21 A. Since the early '80s.

22 Q. Okay, that would be prior to 1985?

23 A. Yes.

24 Q. Do you have any relationship, formal relationship

25 with Matson Hardwoods or Matson Lumber Company other than

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11 your status as outside counsel?

A. No.

Q. Was Matson Lumber Company a client of the firm when you joined?

A. No.

Q. Were you the only attorney in your firm during those periods of time that represented Matson Lumber Company in a professional capacity?

A. No, my father did, too.

Q. Your father was?

A. Donald J. Dennison.

Q. Between yourself and your father, who would have had primary responsibility for that client?

A. Probably in the '80s, in the early '80s when we first started, it was maybe co-extensive, but as time wore on, my father was in his 60s at that point, so I did more and more. But, my father had a direct relationship with Bob Matson, so they would do a lot of things together, talk business a lot.

Q. Okay, so he had a personal relationship, as well as a professional relationship with Robert Matson?

A. Right. Maybe I would do the nuts-and-bolts-type thing and my father would have the general discussions with Mr. Matson, and they would tell me what I needed to do or whatever.

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11

12 Q. And just for the record, Robert Matson was an

officer or director of Matson Lumber Company or Matson Hardwoods?

A. He was the owner.

Q. He was the owner, okay.

With regard to your being here today as designated by Matson Lumber Company with regard to the items of inquiry included in the Notice of Deposition, can you tell me what investigation you undertook in order to prepare for your deposition today as Matson's designated representative?

A. The only thing I did was I reviewed the Deposition Notice, and I did not look at anything else in preparation for today's testimony.

Q. Did you have any conversations or talk to any employees of Matson Hardwoods or Matson Lumber Company?

A. No.

MR. GING: Just for clarification, you have done other things dealing with this subject matter prior to today; is that correct?

THE WITNESS: Oh, yes, but in actual preparation for this, I didn't review anything.

BY MR. FRYLING:

Q. Okay, as I understand it, then, your firm began doing legal work for Matson back in the early 1980s. Do you know whether your firm did all of Matson's work or

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13  
1 whether Matson farmed out work to other lawyers during that  
2 period of time?

3 **A.** We were always general counsel for Matson Lumber  
4 since the early 1980s. Bob Matson would retain attorneys  
5 to help him with his estate plan, and to the extent that  
6 maybe his estate plan would impact upon Matson Lumber  
7 Company, I would have discussions with those attorneys.

8 **Q.** Okay. It's my understanding, through papers that  
9 have been filed in this case, that there was a merger that  
10 occurred, I believe in December of 1986, wherein Matson  
11 Hardwoods merged with Fisher & Young Hardwoods, Inc.; is  
12 that correct?

13 **A.** Correct.

14 **Q.** Would you and/or your firm have participated in  
15 that merger, as far as representing Matson Hardwoods?

16 **A.** Yes.

17 **Q.** Did you personally participate in that?

18 **A.** Yes.

19 **Q.** Okay. It's my understanding that at the time of  
20 that merger there was some litigation pending between -- or  
21 with Albert Carlisle and at the time Fisher & Young  
22 Hardwoods versus Mr. and Mrs. McChesney (phonetic) in  
23 Warren County, Pennsylvania. Are you familiar with that?  
24 **A.** Not really. I know of it. I have heard of it.  
25 At the time of the merger, it was my understanding that I

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14  
1 think that case was on appeal that the -- Mr. Carlisle and  
2 Fisher & Young had prevailed and John Kookogeys was the  
3 attorney of record, and that's the only knowledge I really  
4 have of that. I think I have seen some of the pleadings.  
5 I know that I have seen some of the pleadings. That's the  
6 only knowledge that I have had of that.

7 **Q.** It's my understanding from reviewing the  
8 McChesney litigation that that matter actually went to  
9 trial in 1987, which I believe would have post dated the  
10 actual merger. Would that be true?

11 **A.** If your statement is correct, that would be true.

12 **Q.** Okay. And it's my understanding, and I believe  
13 yours as well, that Attorney John Kookogeys, at that time,  
14 was representing Fisher & Young?

15 **A.** Correct.

16 **Q.** Were you asked or were you required to provide  
17 any information or any documents during that litigation to  
18 anybody in order to establish that Matson was now the real  
19 party in interest for that trial?

20 **A.** Not to my knowledge.

21 **Q.** Also, if I understand your testimony, you were  
22 not asked by anyone from Matson to review the status of  
23 that litigation or to investigate the status of that  
24 McChesney litigation?  
25 **A.** That's correct.

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15

1 Q. It's my understanding further than that Attorney  
2 Kookokey would have handled that litigation for Matson or  
3 on behalf of Matson through the end of that litigation?  
4 A. Correct.  
5 Q. Could you tell me what your role and  
6 participation was in the merger?  
7 A. Now we are going back almost 20 years. I  
8 prepared the articles of merger.  
9 Q. Okay.  
10 A. And I cannot remember who was advising Matson  
11 concerning any kind of tax matters related to that merger.  
12 Q. So there would have been other potential lawyers  
13 involved overlooking tax matters or other business matters?  
14 A. Correct.  
15 Q. But your firm took care of at least drafting and  
16 working through the articles of merger?  
17 A. Yes.  
18 Q. And do you recall who was representing Fisher &  
19 Young at that time?  
20 A. It was sort of a collection of attorneys who  
21 represented the individual shareholders.  
22 Q. Okay.  
23 A. That's who attended the closing.  
24 Q. And I believe, if I'm correct, the actual merger  
25 was with Matson Hardwoods?

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16

1 A. Correct.  
2 Q. Was Matson Hardwoods a partnership at the time?  
3 A. No. I had filed the articles of incorporation  
4 for Matson Hardwoods at some point for Matson Hardwoods,  
5 Inc.  
6 Q. And then, as I understand it, each of the  
7 shareholders of Matson Hardwoods, Inc. would have been  
8 represented by their own counsel at the time of the merger?  
9 A. They all attended the closing, and there was an  
10 attorney from Erie, Harry Martin, and he represented -- I  
11 remember him by name that he represented some of the  
12 shareholders and/or Fisher & Young itself. I can't  
13 remember.  
14 MR. GING: Excuse me, for clarification, the  
15 question was -- I believe the question was directed to each  
16 of the shareholders of Matson Hardwoods not Fisher & Young.  
17 You meant Fisher & Young?  
18 MR. FRYLING: No, I did not. He indicated,  
19 if I understood him correctly, that he represented Matson  
20 Hardwoods but that each of the shareholders of Matson  
21 Hardwoods --  
22 THE WITNESS: Oh, no.  
23 MR. FRYLING: -- may have been represented  
24 by counsel as well.  
25 THE WITNESS: No. Matson Hardwoods was

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17

owned -- was a subsidiary, at that point, of Matson Industries. I misunderstood you.

MR. GING: For clarification, his earlier testimony was that a collection of lawyers for the shareholders of Fisher & Young were present at the closing.

MR. FRYLING: Okay.

THE WITNESS: Right.

MR. FRYLING: I misunderstood. I thought they were shareholders of Matson.

THE WITNESS: No, Fisher & Young.

MR. GING: I apologize. I just wanted to clarify that.

MR. FRYLING: That's fine. Thank you.

**BY MR. FRYLING:**

**Q.** What did Fisher & Young acquire in the merger -- or I'm sorry, what did Matson acquire from Fisher & Young in the merger?

**A.** Various tracts of land.

**Q.** Was there any kind of physical plant that they acquired in the merger?

**A.** Not that I recall.

**Q.** All right. Were there business records and documents that were acquired in the merger?

**A.** Not that I recall.

**Q.** Do you know if Matson acquired any corporate

1

records?

**A.** We would have probably had copies of their articles of incorporation and things like that that we verified, but I don't remember acquiring -- Well, let me back up. We would have had to have acquired the stock and the -- since it was a merger.

So, yes, we would have acquired the stock and anything we needed to effectuate the merger as a matter of law, we would have acquired.

**Q.** Did Fisher & Young, at the time, have a physical location, plant, offices?

**A.** No, not to my knowledge. Not that I remember, I should say.

**Q.** Okay. So there wouldn't have been office space or office furniture and those kinds of things that were acquired during the merger?

**A.** Not that I recall.

**Q.** Okay. So my understanding, then, is what was acquired through the merger was the acquisition of timber and real estate?

**A.** That's what I was concerned with.

**Q.** Were there other lawyers involved in the overall deal that were concerned with acquiring other things, other assets?

**A.** I don't have any recollection of anything being

18

19

important except the timber and land.

Q. I believe you testified that there was actually a closing that occurred?

A. Yes.

Q. What was acquired at the time of the closing as far as documents that were created and executed by the parties?

A. There's a whole stack of, I think Len calls it the bible or whatever, of documents that were acquired at that closing.

Q. Do you recall generally what those would have included?

A. Not without actually looking at them.

Q. And those documents would be in the possession of Matson?

A. Yes.

Q. With regard to the merger and acquisition by Matson Lumber Company, were you requested by Matson to do a title search or title abstract on the timber and real property that was being acquired by Matson Lumber Company or Matson Hardwoods at the time?

A. Yes.

Q. And did you perform a title search or a title abstract on the timber and real property that was being acquired?

20

A. No.

Q. And why not?

A. We didn't have time.

Q. And could you explain that?

A. Well, this thing all came about very quickly, and when we realized how many tracts of land were involved, my father and I, and when they wanted to close, it simply did not make any sense for us to do any of the title work.

Even though economically that would have been great, we couldn't have gotten it done within that time frame to get the closing done, and in the midst of all of this, somehow we became aware that John Kookogey had searched and/or was in a position to issue a title certificate on all these properties. So, it was on that basis that we went to closing.

Q. Did you contact Attorney Kookogey directly with regard to inquiring about title to the properties?

A. That's 20 years ago. I can't remember exactly who contacted whom or whatever. I just remember my father and I saying, we can't do this and then finding out that Kookogey was willing to do it. And we were then able to close before the end of the year, which was the critical part.

Q. I take it, then, that Attorney Kookogey was in a position to be able to provide, at least to your

21

1 satisfaction, the information necessary in order for the  
2 merger to go through?

3 **A.** Yes, as far as on all the titles to the real  
4 estate.

5 **Q.** Can you tell me what documents or information  
6 Attorney Kookogey provided you with regard to the title for  
7 the properties that were being acquired through the merger?

8 **A.** He gave us a certificate of title.

9 **Q.** Did he give you anything else other than a  
10 certificate of title?

11 **A.** Not to my knowledge, not that I can remember.

12 **Q.** And what did the certificate of title include?  
13 Do you know?

14 **A.** I mean, it's of record. If you show it to me ...

15 **Q.** Let me see if I brought a copy with me.

16 **MR. GING:** It was in our response to the  
17 document in question.

18 **BY MR. FRYLING:**

19 **Q.** Mr. Dennison, I'm going to show you a copy of  
20 answer to Defendant Carlisle's request for production of  
21 documents on behalf of Matson Lumber Company in the  
22 Carlisle, Hall, Martin and Holmes case, and attached  
23 thereto, the first document has an exhibit label on the  
24 bottom of it of 64.

25 I'm going to show you that document and ask if you can

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22

1 identify that as the certificate of title that was issued  
2 by Attorney Kookogey to either yourself or to Matson  
3 Hardwoods?

4 **A.** That's it.

5 **Q.** What does that document consist of?

6 **A.** Two pages.

7 **Q.** Were there any other documents attached to that  
8 two-page certificate of title?

9 **A.** No, I don't think there's an Exhibit A to that.

10 **Q.** Did you, at any time prior to the merger, look at  
11 any of the actual title work that may have been  
12 Mr. Kookogey's possession upon which he relied in  
13 presenting to you or to Matson the certificate of title  
14 that's enclosed in the request for the production of  
15 documents?

16 **A.** No.

17 **Q.** Wasn't that made available to you, or why not?

18 **A.** We were in such a rush to get that thing done,  
19 and I was worried about and concerned about a whole bunch  
20 of other things, and as long as Mr. Kookogey gave us that  
21 certificate, I didn't even concern myself then with that  
22 aspect of the closing.

23 **Q.** With regard to the certificate of title, I'm  
24 going to show you an invoice that's dated January 23, 1987,  
25 addressed to Matson Hardwoods, Inc. in Brookville, and at

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23

the bottom says due Jack, Kookogey and Felton.

MR. FRYLING: We'll mark that as Exhibit 1.

(Deposition Exhibit No. 1 was marked for identification.)

Q. Do you recall having seen Exhibit 1 before?

A. No, I don't.

Q. Do you know whether or not that invoice would relate to the properties that were included within the certificate of title that was given by Mr. Kookogey dated December 19 of 1986?

A. It appears that they are all the costs.

Q. And those would be, if I understand from reviewing that document, certain deeds or certain documents were required to be filed at various counties documenting the merger or the transfer of the property from Fisher & Young to Matson, correct?

A. I don't know that we would have had to record the articles of merger in each county, and these are recording timber deeds, so I'm not sure what this really -- why this was done.

He was holding some timber deeds, but I don't know -- I don't know what that invoice is really for. I can't remember.

Q. That's fine.

A. I remember we had to record the articles of merger in each county, but I don't think there is transfer

24

tax due on those.

Q. Did Matson receive, as a result of the merger from Fisher & Young, any type of deeds transferring either the timber and/or the real estate for any of the properties to Matson?

A. Did they receive a deed?

Q. Yeah.

A. In '86?

Q. Correct.

A. No, not to my knowledge.

(Deposition Exhibit No. 2 was marked for identification.)

BY MR. FRYLING:

Q. Mr. Dennison, I'm going to hand you what was marked as Exhibit No. 2 and ask if you can take a look at that document for us, please.

A. (Witness complied.)

Q. Mr. Dennison, with regard to Exhibit 2, have you seen that document before?

A. Not to my knowledge.

Q. All right. This is a document that was provided to us by counsel for Matson, Mr. Ging, in request -- or in response to a subpoena that was issued to Matson Lumber Company for copies of deeds relating to the properties that they acquired from Fisher & Young.

25

1 It appears that that is a deed that was prepared by  
2 Elderkin, Martin, Kelly, Messena & Zamboldi in Erie,  
3 Pennsylvania. I believe you testified that Harry Martin of  
4 that firm may have represented Fisher & Young at the time  
5 of the closing at the merger, correct?

6 **A.** Yes.

7 **MR. GING:** Just for clarification, Jim, I  
8 think that that may have been in the box of Matson  
9 information we provided to you as opposed to something that  
10 we provided in response to a subpoena.

11 **MR. FRYLING:** Okay.

12 **MR. GING:** I'm not sure, but I think that  
13 that was in the box that we sent up.

14 **MR. FRYLING:** It was.

15 **MR. GING:** I don't know that it was in  
16 response to a subpoena.

17 **MR. FRYLING:** That's fine. A document that  
18 I received from Matson through Matson's counsel --

19 **MR. GING:** Correct.

20 **MR. FRYLING:** -- either pursuant to the  
21 request for production of documents or through subpoena  
22 that was issued.

23 **BY MR. FRYLING:**

24 **Q.** It appears to be a timber deed between Fisher &  
25 Young, Inc., and I have difficulty reading upside down --

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26

1 Fisher & Young Hardwoods, Inc. Does that appear to be  
2 correct?

3 **A.** Yes, from Fisher & Young, Inc. and Fisher & Young  
4 Hardwoods with a bunch of other grantors involved.

5 **Q.** It's my understanding, from just kind of a  
6 history, when Mr. Carlisle purchased the land that is known  
7 as Clough Farm, he purchased from Fisher & Young, Inc., who  
8 would be named as the grantor in that timber deed, correct?

9 **A.** They are one of the grantors, yes.

10 **Q.** And that ultimately Fisher & Young, Inc. became  
11 American Hardwoods, which became Fisher & Young Hardwoods,  
12 which ultimately was the company that merged with Matson.  
13 Is that your understanding as well?

14 **A.** That's what my understanding is.

15 **Q.** This appears to be a timber deed, then, from  
16 Fisher & Young, Inc. to Fisher & Young Hardwoods, Inc.  
17 transferring presumably whatever properties and timber were  
18 owned by Fisher & Young, Inc. at the time to Fisher & Young  
19 Hardwoods, Inc.?

20 **A.** Yes.

21 **Q.** There is a similar type of deed that was created  
22 from Fisher & Young Hardwoods, Inc. to Matson Lumber  
23 Company -- or Matson Hardwoods?

24 **A.** No.

25 **Q.** It's my understanding that to the extent that

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1 Matson Hardwoods acquired timber rights to the Clough Farm,  
2 they would have acquired through the merger whatever  
3 interest Fisher & Young Hardwoods held at the time; is that  
4 correct?

5 A. That's correct.

6 Q. In reviewing this timber deed from Fisher &  
7 Young, Inc. to Fisher & Young Hardwoods, Inc., it appears  
8 that the only parcel that was transferred to Fisher &  
9 Young, Inc. regarding the Clough Farm appears on page seven  
10 of the exhibit. And you can take a quick look. I have  
11 done it, and I couldn't find any other reference to Kinkead  
12 or to the Clough Farm in that deed.

13 MR. GING: I am going to object to the form  
14 of the question, as it relates to the Clough Farm, but you  
15 can answer the question.

16 A. Can you restate that because, see, I don't know  
17 -- I'm not familiar with this deed. I'm not familiar,  
18 without looking at the description, legal description for  
19 the Clough Farm.

20 Q. Okay.

21 A. So, this don't really --

22 MR. FRYLING: Let me mark this 3.

23 (Deposition Exhibit No. 3 was marked for  
24 identification.)

25 BY MR. FRYLING:

28

1 Q. I'm going to show you what we marked as Exhibit  
2 3, which is a copy of a deed between Marion C. Kinkead and  
3 Fisher & Young, Inc.

4 This deed is dated March 27, 1969, and you can take my  
5 representation that this, to the extent that we know, is  
6 the deed by which Mrs. Kinkead transferred the real  
7 property to Fisher & Young, Inc. That deed includes a  
8 description of the real estate that was transferred by  
9 Mrs. Kinkead to Fisher & Young.

10 A. Okay.

11 Q. Now, I believe that that legal description  
12 includes 18 enumerated parcels of land. It's my further  
13 understanding that at the time that Mrs. Kinkead sold to  
14 Fisher & Young, Inc. that one of those parcels had  
15 previously been sold to a third party, so that one of the  
16 parcels included within that description actually wasn't  
17 owned by Mrs. Kinkead at the time that she sold it to  
18 Fisher & Young.

19 MR. GING: Before we go on -- I'm sorry, go  
20 ahead. I apologize.

21 Q. It's my further understanding that in reviewing  
22 the deed from Fisher & Young to Mr. Carlisle that one other  
23 parcel of property that was acquired from Mrs. Kinkead was  
24 not transferred to Mr. Carlisle. So, the original Kinkead  
25 deed lists 18 parcels, the deed to Fisher & Young was 17

29

1 parcels, the deed from Fisher & Young to Carlisle consisted  
2 of 16 parcels.

3 Having said that, that's the original deed or copy of  
4 the original deed from Mrs. Kinkead, and my question to you  
5 is, does that legal description for the Carlisle Farm,  
6 either in whole or in part, appear in the timber deed  
7 between Fisher & Young, Inc. and Fisher & Young Hardwoods  
8 that we have marked as Exhibit 2?

9 A. Do you want me to compare the descriptions in  
10 these two deeds? Or can you tell me what ...

11 Q. Well, I have reviewed this deed. There is only  
12 one county listed, a Spring Creek Township, and it's my  
13 understanding that the Clough Farm was located in Spring  
14 Creek Township, Warren County?

15 A. Correct.

16 Q. The only reference to Kinkead or to any property  
17 that appears within the chain of title for the Kinkead  
18 property, I will use Kinkead because she was the last  
19 common owner, the only parcel that appears to be included  
20 within this timber deed that's Exhibit 2 is a parcel number  
21 16 containing 153 acres?

22 A. If you're asking me if that's the only parcel in  
23 Exhibit 2 that states Kinkead, you're correct. As far as  
24 Spring Creek Township, it says 153 acres.

25 Q. Okay. Are you aware of any timber deed between

30

1 Fisher & Young, Inc. and Fisher & Young Hardwoods, Inc.  
2 whereby the title to either the timber and trees or to real  
3 estate or to anything was deeded between Fisher & Young,  
4 Inc. and Fisher & Young Hardwoods, Inc.?

5 A. Yes.

6 Q. Okay, and what deed would that be?

7 A. Sometime in late 2002 or early 2003, Peter Crems  
8 (phonetic) called me and wanted to see the deed between  
9 Fisher & Young and Fisher & Young Hardwoods, Inc.

10 Q. Okay.

11 A. So, I went through the file, and the only thing  
12 that I found was the photocopy of the first page of the  
13 deed, and I think I was able to identify that it did apply  
14 to the Clough Farm, but I couldn't find the rest of the  
15 deed.

16 Q. And do you have a copy of that first page of the  
17 deed?

18 A. Somewhere in all the shuffling around; it's  
19 somewhere. It's with Bob.

20 MR. GING: We provided all the documents  
21 that we had, and I do recall that there were a couple first  
22 pages of deeds, I think. One of the responses, it might  
23 have been the articles of agreement, it might have been a  
24 deed, but you should have gotten a couple of first pages in  
25 one of our document responses.



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MR. FRYLING: I did receive a number of first pages of articles of agreement, but those were between Kinkadee and Fisher & Young.

I can purport that the only documents in my box that has titled on it Fisher & Young, Inc. to Fisher & Young Hardwoods, Inc. is represented by the timber deed that we have marked as Exhibit 2, hence my question as to whether there was another deed existing between Fisher & Young, Inc. and Fisher & Young Hardwoods, Inc. addressing specifically the Carlisle Farm, since this deed doesn't appear to include that rather lengthy description.

A. There was another deed.

Q. I will follow up with a supplemental request, but if you could --

A. We have looked for it. I asked Leonard for that.

Q. Do you know whether or not that deed has been recorded?

A. It has not been recorded.

Q. So, you believe that there is an unrecorded deed between Fisher & Young, Inc. and Fisher & Young Hardwoods, Inc. specifically for the Carlisle/Ciough Farm?

A. Yes.

Q. Do you know why Exhibit 2 would have been recorded but this other deed unrecorded?

A. I have no idea.

32

Q. And just so --

A. When I said no idea, what happened in late 2002 or 2003, when Peter Crems called me for that deed, I looked through my file and I found just the first page of that deed. And then, I thought, well, it should be recorded. So, I asked Lauri Sekerak to get me a copy of it.

Q. We have had a couple of conferences over the phone back and forth with regard to document requests and whether there were documents and/or other documents.

It was my understanding, from prior conversation with Attorney Ging and yourself, in response to that that there was a 1973 timber deed that Peter Crems had inquired about getting a copy of, and it was my understanding that in response to that you had contacted Ms. Sekerak and asked her to provide you with a copy of that deed.

Are you talking about the same deed?

A. Right. He called me and wanted to see the deed, as I recall, from Fisher & Young to Fisher & Young Hardwoods, and I thought that was sort of a curious -- I thought, well, why don't you just get a copy of it.

So, I remember thinking, well, I will just get a copy from Len, and I remember thinking that Len wouldn't have it because we didn't have anything from -- Len wouldn't have that because we didn't have anything regarding the chain of title.



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1 And the only thing that I could find was the first  
2 page of that deed. Somehow, we got that, I don't know how,  
3 but then I asked -- Then I just sort of didn't look for it  
4 anymore because I got busy on other things, and then Crews  
5 called me again and wanted -- I'm trying to think of this.  
6 He called me, and that's when I found the first page of  
7 that deed and I sent him the first page of the deed.

8 I can't remember exactly what happened after that  
9 except that I called Lauri Sekerak and I said, Get me the  
10 deed between Fisher & Young and Fisher & Young Hardwoods,  
11 Inc.

12 And then, in the mail, I got the deed that had Marion  
13 Kinkead's name on it, and I looked at that deed and I  
14 thought to myself, She must have misunderstood what I was  
15 talking about because I had never heard of Marion Kinkead  
16 before. I thought we had just gotten our signals crossed,  
17 and I'm not familiar with the legal description with the  
18 Clough Farm, so I didn't look at it to see if it jived or  
19 anything. All I remember is seeing Kinkead and thinking  
20 this must be some mistake.

21 So then some period of time went by, and then, Crews  
22 called me again and said, I want to -- can you please send  
23 me the deed between Fisher & Young and Fisher & Young  
24 Hardwoods, Inc. I think at that point I called Lauri  
25 Sekerak, and I said, Lauri, I wanted you to send a deed

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1 between Fisher & Young and Fisher & Young Hardwoods, Inc.  
2 and you sent me this Kinkead deed. And she said to me, she  
3 said, Well that's the last deed of record.

4 So, then, I think I went through my file and I found  
5 the first page of that Fisher & Young to Fisher & Young  
6 Hardwoods, Inc. deed, but that's all I had. And I remember  
7 I sent it to Crews.

8 Q. Okay.

9 A. But then, I started to wonder, Well, why was that  
10 the last -- why was that Kinkead deed the last deed of  
11 record.

12 So then I think I went to -- figured out I went to the  
13 certificate of title, and it said that Kookogey was holding  
14 some deeds. So, I tried to find Kookogey, and he was no  
15 longer practicing, so I called an attorney over there that  
16 I knew, and I said, Do you know where John Kookogey is? He  
17 said, He is retired, but sometimes he goes into the office  
18 every once in a while with an attorney over there in  
19 Titusville.

20 So, that's when I contacted John Kookogey and I said,  
21 Do you have these deeds that you reference in your  
22 certificate of title, and he didn't know, but he said, I  
23 would be more than happy to go down to my old office, if  
24 you can go over, and we can go through my files and we can  
25 see if I have those deeds.

35

1 So, that's what I did. I went over to his office, and  
2 he had several deeds, one of which was the original  
3 unrecorded deed from Fisher & Young to Fisher & Young  
4 Hardwoods, Inc.

5 Q. Did you make copies of those?

6 A. I brought them back to my office, and I gave them  
7 to Ien.

8 Q. Tell me when this occurred.

9 A. This would have occurred in -- let me see  
10 something. (Witness on computer.) I think it would have  
11 occurred in -- What was the date of the Squatriti deed?

12 Q. May 6th of 2003.

13 A. It would have been prior to that. It would have  
14 been March or April of 2003, in that range.

15 Q. Okay.

16 A. Because I got the call from Crews in December,  
17 January, sometime in that time frame, and then there was a  
18 delay. And then, I called Iauri, and she told me that that  
19 was the last deed of record, and it was after that point  
20 that I started to try to find John Kookogey.

21 Q. Prior to going down and meeting with Mr. Kookogey  
22 and looking at whatever documents he had in his file, do  
23 you know how it is that you would have come across the  
24 Exhibit 2, which is the timber deed from Fisher & Young,  
25 Inc. to Fisher & Young Hardwoods, Inc.?

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1 A. Yeah. I don't remember seeing this deed, unless  
2 this was -- is this a schedule of all the other properties  
3 that were sold in the -- that Matson acquired by merger in  
4 the deal?

5 Q. I don't know. This deed purports to be between  
6 Fisher & Young, Inc. and Fisher & Young Hardwoods, Inc. and  
7 lists a number of properties. One property does not list a  
8 description for the Clough Farm.

9 My only question was since I got that from Matson  
10 whether or not there would be another timber deed from now  
11 in the chain Fisher & Young Hardwoods, Inc. to either  
12 Matson Hardwoods or somebody else in the chain of title?

13 A. There is no deed from into Matson Hardwoods,  
14 Inc., that I'm aware of. That was all done through the  
15 articles of merger. We didn't need a deed because we were  
16 acquiring anything that Fisher & Young Hardwoods, Inc. had.  
17 We acquired that because we got the articles of merger and  
18 there wasn't a need to have any deeds that wasn't in fact  
19 the deed for the property.

20 Q. If I understand your testimony correctly, you  
21 didn't review any deeds for any of the properties or any of  
22 the titles to any of the properties at the time of the  
23 merger?

24 A. Not that I remember. I don't think I reviewed  
25 any deeds.

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1 Q. Now, subsequent to the merger, did you prepare  
2 any deeds reflecting a transfer of ownership from Fisher &  
3 Young Hardwoods, Inc. to either Matson Hardwoods or Matson  
4 Lumber Company or anybody else?

5 A. No.

6 Q. After the merger, did you perform a title search  
7 or review a title search or abstract regarding any of the  
8 properties acquired by Matson Hardwoods from Fisher & Young  
9 Hardwoods, Inc.?

10 A. No.

11 Q. It's my understanding, then, that you didn't have  
12 any role or participation in the McChesney trial, correct?

13 A. Correct.

14 Q. After that trial was concluded, did Mr. Kookogey  
15 return to Matson the trial documents from that case?

16 A. I really don't have any knowledge of McChesney or  
17 what was done. I had very little contact with  
18 Mr. Kookogey.

19 Q. There was a title search done on the Carlisle  
20 property/Clough Farm by Matson Lumber Company or Fisher &  
21 Young, I guess it would have been Fisher & Young at that  
22 time, by Mr. Tom Pierce.

23 Have you ever seen or reviewed that title search or  
24 abstract that was performed by Mr. Pierce for the McChesney  
25 litigation?

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1 A. No. I have never heard of Mr. Piece, either,  
2 that I know of.

3 Q. Okay.

4 (Deposition Exhibits No. 4, No. 5, No. 6  
5 and No. 7 were marked for identification.)

6 BY MR. FYLLING:

7 Q. Mr. Dennison, I'm going to hand you four items  
8 that I have marked Exhibits 4, 5, 6 and 7 and ask you if  
9 you can identify those documents?

10 MR. GING: Can you read the exhibit number  
11 when you identify them.

12 A. Exhibit No. 4 is a letter from me dated  
13 August 10, 1993. It's a letter of enclosure to Len where  
14 I'm enclosing a deed from B & B Hardwoods and Pennsylvania  
15 Hardwoods, Inc.

16 Q. I'm not going to ask a lot of questions about  
17 them, but if you could just identify them for the record.

18 A. Exhibit 5 is a letter of enclosure from me to Len  
19 from the timber sales agreement from Robert Matson, Joan  
20 and Becky Matson and Barb Conti to Matson Hardwoods, Inc.,  
21 dated September 1st, 1993.

22 MR. GING: Hold on, John. What's the date  
23 of the letter?

24 THE WITNESS: April 18, 1994.

25 A. The next one is a deed dated, Exhibit 6,

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December 29, 1989 from Matson Lumber Company to Matson Industries, Inc.

The next one is Exhibit No. 7. It's a deed from

Matson Industries, Inc. to B & B Hardwoods, Co. for various tracts of land.

Q. Did you draft the deeds that are represented in those exhibits?

A. Yes.

Q. And do those deeds address, either in whole or in part, the Clough Farm?

A. I don't know.

Q. What would be the purpose of those deeds?

A. I don't remember. I don't even remember. I saw one of these deeds when I was -- I forget whether Bob showed it to me or not. I have absolutely no recollection of these deeds, doing them or why they were done.

Q. Okay. I would take it from your answer, then, that -- Well, I won't take anything.

Did you perform a title search or title abstract of the properties contained within those deeds prior to drafting those deeds?

A. No. I can tell you that I was instructed to do these deeds, and I simply did them.

Q. Okay. I didn't know whether you would have done a search or not. That's all I'm trying to find out.

40

A. No. I'm just trying to say that's why I don't have any recollection of them. I think the accountant or somebody said, Do these deeds. So, I simply did them. I don't have -- I just do them.

Q. Now, in 1995, Mr. Carlisle brought a claim in the United States District Court against Matson resulting from some timber activities that Matson was performing on the Carlisle Farm. Are you familiar with that litigation?

A. Yes.

Q. Did you have any role or participation in that litigation?

A. No.

Q. It's my understanding that during that litigation Matson was represented by Attorney Chester Fossee?

A. Correct.

Q. Did you select and retain Attorney Fossee on behalf of Matson Lumber Company?

A. No.

Q. Did you have any contact with Attorney Fossee regarding that litigation?

A. The only thing I remember is that he had done work -- Talking about other attorneys doing work, now it's coming back to me a little bit.

Chester Fossee had been involved in some litigation in the early 1980s between Bob and Jim.

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1 Q. I'm sorry, when you say Bob and Jim --

2 A. Bob and Jim Matson.

3 Q. Okay.

4 A. And he also, I think, did work for Hartford

5 Insurance Company, and I can remember working out some sort  
6 of agreement that Chet would be paid half by Matson Lumber  
7 and half by Hartford. That's all I remember.

8 Q. Okay. Did you have any contact during the  
9 pendency of the 1995 court litigation with Attorney  
10 Kookogey?

11 A. No.

12 Q. Who did Attorney Fossee contact at Matson -- Let  
13 me back up. Did Attorney Fossee contact Matson Lumber  
14 Company and inquire about information or documents  
15 regarding Matson's title to the Clough Farm?

16 A. Not to my knowledge.

17 When you say title, you're talking about the  
18 present -- Let me rephrase that.

19 He definitely would have had the agreement of sale  
20 between Fisher & Young and Carlisle. He definitely -- I  
21 know he had that.

22 Q. Okay.

23 A. And I know he had the deed.

24 Q. Okay.

25 A. But other than that, I don't think that he had,

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1 to my knowledge, that he had any other information.

2 Q. So, he never contacted you specifically as  
3 counsel for Matson and requested any information or

4 documents establishing Matson's right, title or interest in  
5 the timber and trees on the Clough Farm?

6 A. Except for the agreement in the deed, which I  
7 knew he had copies of both of those.

8 Q. Okay, so, he did ask you specifically for those?

9 A. No, he didn't ask me for those, but I remember  
10 him trying to figure out which was the right agreement  
11 because there was something about he wanted to make sure he  
12 had the right agreement because there was -- I don't know  
13 whether there were pages missing or something. I just  
14 remember something about that.

15 Q. Okay.

16 A. Or during the trial, he had to make certain that  
17 he had the right agreement.

18 (Deposition Exhibits No. 8 and No. 9 were  
19 marked for identification.)

20 MR. FRYLING: I thought I had extra copies  
21 of these, but I don't.

22 MR. GING: Can we get copies made?

23 THE WITNESS: Yes. There is a copier right  
24 out there.

25 MR. GING: Is there another page to 8?

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MR. FRYLING: That's all that was in the box.

MR. GING: From our box?

MR. FRYLING: Yes. All of these documents are from that box.

MR. GING: Was Kookoge's file in that box?

MR. FRYLING: No.

MR. GING: Are you sure?

MR. FRYLING: (Nodded head affirmatively.)

There was nothing identifying as Kookoge --

MR. GING: It had a bunch of yellow pieces of paper, like old-fashioned carbons.

MR. FRYLING: No.

MR. GING: Are you sure?

MR. FRYLING: Positive.

MR. GING: Let's go off the record for a second.

(A discussion was had off the record.)

BY MR. FRYLING:

Q. Mr. Dennison, we are back on the record. I will hand you what we have marked as Exhibit 8 and Exhibit 9, and I will represent to you that these were documents that I received from Matson.

Exhibit 8 appears to be dated May 5 of 1995 addressed to Mr. Fossee, and it does not appear to have a signature

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on it, but I'm just wondering if you have seen at least the first page of that document before?

A. Not that I recall.

Q. All right. I have also got Exhibit 9, which appears to be a June 13, 1995 correspondence -- or copy of correspondence to Attorney Fossee from Mr. Domenick. Have you seen a copy of that document before?

A. Not that I recall.

Q. Do you know if Attorney Fossee would have contacted Len Domenick at Matson directly with regard to information concerning Matson's ownership interest in the timber tracts of the Clough Farm?

A. He -- I do not recall ever having to furnish information to Chet Fossee. He didn't go through me to get information from Matson Lumber.

For him to get information from Matson Lumber, he would normally go through Len.

Q. Okay.

A. That's the protocol for anybody to get information from Matson Lumber.

Q. If any counsel representing Matson needed information, they would contact Mr. Domenick?

A. Or they would be referred to him.

Q. Or they would be referred to him?

A. Normally.

45  
1 Q. Did Attorney Fossee, during that 1995 litigation,  
2 ever contact you specifically with regard to questions that  
3 he may have had regarding Matson's title interest in the

4 timber on the Clough Farm?

5 A. Not that I recall.

6 Q. As you recall, the only contact you may have had  
7 was Attorney Fossee confirming whether or not he had the  
8 correct documents as far as the agreement and deed?

9 A. I think, just thinking out loud now, I talked to  
10 him, I think, when he was first retained just to firm all  
11 that up, and I think after the decision came in, he  
12 obviously -- Mr. Matson was concerned about the decision  
13 and talked to me about that, and I think I talked to  
14 Mr. Fossee about the decision, and that's where maybe we  
15 were talking about the agreement of sale and he wanted me  
16 to look at something. He wanted to make sure I had the  
17 right agreement. I think that was afterwards, after the  
18 trial.

19 Q. Okay.

20 A. I don't remember talking to him really much. I  
21 may have, but it wasn't like a steady ongoing thing or  
22 anything during the pendency of the case.

23 Q. All right. With regard to the Carlisle/Clough  
24 Farm, have you, at any time prior to today, done a title  
25 search or title abstract on that property with regard

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1 specifically to the timber and trees?

2 A. No.

3 (Deposition Exhibit No. 10 was marked for

4 identification.)

5 BY MR. FRYLING:

6 Q. Mr. Dennison, I'm going to show you what I have  
7 marked as Exhibit No. 10 and ask you if you can identify  
8 that document?

9 A. Do you want me to identify that for the record?

10 Q. Yes.

11 A. This is a letter to Robert Matson from John  
12 Kookogey regarding the Clough Farm.

13 Q. Can you tell us when that's dated?

14 A. October 30, 1987.

15 Q. All right. It appears, from just a quick review  
16 of that letter, that Mr. Matson had some questions to  
17 Attorney Kookogey regarding what right or interest Matson  
18 had in the Carlisle/Clough Farm, and that appears to be  
19 Attorney Kookogey's response back to Mr. Matson, as  
20 president of Matson Lumber Company, with at least Attorney  
21 Kookogey's written understanding of the agreement that's  
22 attached to that letter, correct?

23 A. That's correct.

24 Q. All right. That letter is dated October of 1987.  
25 Did you have any conversation or were you asked by



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1 Mr. Matson to look into any issues regarding the title to  
2 the timber on the Clough Farm for Matson Lumber Company?

3 A. I don't recall that I was really asked any

4 questions about the Clough Farm.

5 Q. Okay.

6 A. Ever. Because Mr. Kookogey had drafted the  
7 agreement and was more familiar with it, was familiar with  
8 it, and I wasn't.

9 Q. Okay.

10 A. I see that that looks like Len's handwriting  
11 where he sent me a copy of this letter. I noticed that.

12 Q. Again, that would be Len Domenick?

13 A. Yes.

14 (A discussion was had off the record.)

15 (Deposition Exhibit No. 11 was marked for  
16 identification.)

17 BY MR. FRYLING:

18 Q. I'm handing you what is marked as Deposition  
19 Exhibit No. 11, and that is titled list of exhibits, and at  
20 the bottom of the page, first page, appears to be 10 and  
21 then it goes on through page 15. That is the index to the  
22 exhibit list, which I'm going to hand to you, which is a  
23 multi-page exhibit that has the actual exhibits attached to  
24 this list in the corresponding order.

25 This appears to be a copy of the list of exhibits that

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1 was prepared by Attorney Fossee for the 1995 litigation  
2 between Carlisle and Matson, and, in fact, exhibits that  
3 were admitted during the course of the trial of that case.

4 My question to you is with regard to the various

5 leases and deeds to the Clough Farm that are listed on this  
6 exhibit, would you have provided those documents to  
7 Mr. Fossee for this exhibit list?

8 A. Not that I remember. Again, I do not remember  
9 having any direct involvement in the 1995 case.

10 Q. Who, as Matson's corporate designee, who from  
11 Matson Lumber Company would have provided these documents  
12 to Attorney Fossee for use at the trial?

13 A. Well, again, Len would be the vocal person.  
14 Whether Len would get this information himself and/or have  
15 other people get it for him, that's what I would expect.

16 Q. Would you expect, also, that these are documents  
17 that would have been in possession of Matson Lumber Company  
18 at or about the time of the 1995 Federal Court trial?

19 A. Well, I don't know that because, see, Fossee  
20 was -- John Kookogey was a witness in that case, so how  
21 much of these exhibits he actually got directly from  
22 Kookogey and what he got from Len, I have no idea.

23 Q. Okay.

24 A. But I can't imagine that Len had any of these  
25 letters from Kookogey to David Eardley. I mean, I don't



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1 know. You would have to ask Len if he had those. I don't  
2 know.

3 Q. Okay. So, these documents either came from  
4 Matson or they came from Attorney Kookogey, who was a  
5 witness in the trial for Matson Lumber Company?

6 A. Unless Chet Fossee got them from some other  
7 source that I'm not aware of. You would have to ask him.

8 Q. All right. This list of documents includes a  
9 copy of the deed between Marion C. Kinkead and Fisher &  
10 Young, Inc. dated 3/27/69 designated as Exhibit No. 2 on  
11 the first page; is that correct?

12 A. Yeah. Let me look through this, though.

13 Yeah, I don't -- the only thing that I would say about  
14 this list is that I do not -- unless some of these letters  
15 were in that file that Kookogey gave me that he had, I  
16 don't recognize any of these letters, and I cannot say  
17 where they came from or any of these exhibits came from,  
18 whether they came from Chet Fossee, John Kookogey or Matson  
19 Lumber Company. I have no knowledge of where he got those.

20 Q. My question with regard to this exhibit is it  
21 appears that Exhibit No. 2 is a copy of the deed between  
22 Marion C. Kinkead and Fisher & Young, Inc., 3/27/69, and  
23 Exhibit No. 3 would be Article of Agreement between Marion  
24 C. Kinkead and Fisher & Young, Inc. dated 4/1/68.

25 A. Yes, I see that.

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1 Q. If this package of documents is, in fact, a true  
2 and correct copy of the exhibit listing exhibits that  
3 Mr. Fossee had at the time of trial, these documents would  
4 have been in Matson's possession then prior to the  
5 beginning of that 1997, I guess, was the actual year of  
6 that trial date, correct?

7 A. They would have been in Chet Fossee's possession.  
8 Whether they were in Matson Lumber Company's possession, I  
9 have no knowledge.

10 Q. Okay. Did you review the pleadings in that 1995  
11 federal litigation?

12 A. I think I would have reviewed the initial  
13 Complaint when it came in, and then there was a discussion  
14 about who was going to be retained to defend the case, but  
15 beyond that, I don't have any knowledge of reviewing any of  
16 the pleadings or anything in that case --

17 Q. Were you aware --

18 A. -- until after it was over, of course.

19 Q. Were you aware that Mr. Fossee was filing a  
20 counterclaim at that time?

21 A. I knew that he had filed a counterclaim, but when  
22 that was or whether that was after the lawsuit, after the  
23 verdict, I have no idea.

24 Q. So, you weren't asked to review or approve that  
25 counterclaim on behalf of Matson?

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1 A. Right. I have no knowledge of that.

2 Q. Who from Matson Lumber Company would have done  
3 that, approved of the filing of the counterclaim and  
4 reviewed it?

5 A. I don't know. Whoever signed the verification.

6 Q. Do you know why that counterclaim was withdrawn  
7 prior to trial?

8 A. No.

9 Q. My understanding is that you are counsel of  
10 record in litigation pending in Warren County, Pennsylvania  
11 in a claim brought by Albert T. Carlisle versus Matson  
12 Lumber Company and Matson Hardwoods, correct?

13 A. Right.

14 Q. And just for the record, two other claims that  
15 have been filed in Warren County by Matson Lumber Company  
16 against Mr. Carlisle and various other individual  
17 defendants, are you counsel of record in either of those  
18 cases?

19 A. No.

20 Q. Do you know what the basis of those claims in  
21 those cases are?

22 A. Yes.

23 Q. Tell me what your understanding is.

24 A. Without actually looking at the pleadings --

25 Q. That's okay, as you sit here today.

52

1 A. Well, I know that Carlisle went out and cut trees  
2 that belong to Matson.

3 Q. And what is the basis of your understanding that  
4 those trees belong to Matson?

5 A. The 1995 Federal District Court decision.

6 Q. Is there anything else, other than that 1995  
7 Federal Court litigation, and I presume that's the verdict  
8 that you're talking about?

9 A. Yes.

10 Q. Anything other than the 1995 verdict on which you  
11 base the statement that that timber belonged to or belongs  
12 to Matson Lumber Company?

13 A. Well, I think the decision and the quiet title  
14 action that confirmed the Federal District Court decision,  
15 Judge Millin's decision on summary judgement action that  
16 confirmed the 1995 Court decision, and to the extent that  
17 it's relevant, any rights that Matson obtained through the  
18 Squatrilti deed.

19 Q. Okay. Have you, for today, reviewed and  
20 familiarized yourself with all of the deeds that purport to  
21 relate to the interest in the timber and trees on the  
22 Carlisle Farm for purposes of today's deposition?

23 A. No. You mean, did I go back through -- I have  
24 never done a title search.

25 Q. Have you ever reviewed the source of title

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1 through deeds or other recorded instruments pertaining to  
2 the ownership of the timber and trees on the Carlisle or  
3 Clough Farm?

4 **A.** When Kookokey gave me his file, there were a  
5 bunch of old deeds in it. I never really reviewed them. I  
6 think there was an abstract of title in there. I didn't  
7 look at it really, never reviewed it.

8 **Q.** Okay. Is there anyone at Matson Lumber Company  
9 who can answer the question of what, by virtue of what  
10 deeds or recorded instruments Matson Lumber Company claims  
11 title or rights or interests in the timber and trees on the  
12 Clough Farm?

13 **A.** Yes.

14 **Q.** Who would that person be?

15 **A.** Bob Ging.

16 **Q.** I'm talking about an employee of Matson.

17 **A.** Well, I think that there are so many court  
18 decisions and facets to this. This is not simply the  
19 ability to look at a deed and say, yes, you own this house  
20 because you have a deed for it.

21 I mean, there are so many factors involved in the  
22 Court's decisions that it really calls for a legal  
23 conclusion and not a factual one.

24 **Q.** I understand that. I guess the Notice of  
25 Deposition was specifically addressed to deeds and

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1 agreements that would have been recorded granting any type  
2 of right, title or interest in the timber and trees on the  
3 Carlisle Farm, and that's the basis of my question.

4 Who is the Matson representative, if anybody, and  
5 maybe the answer is nobody, that can address that issue?

6 **A.** Well, the 1995 Federal District Court decision,  
7 with all of the other decisions, are built on -- had as its  
8 basis the agreement between Fisher & Young and Mr. Carlisle  
9 dated May of 1969.

10 **MR. FRYLING:** Okay, let's go off the record  
11 for a second.

12 (A discussion was had off the record.)

13 (Deposition Exhibit No. 12, No. 13 and No.  
14 were marked for identification.)

15 (A short recess was taken.)

16 **BY MR. FRYLING:**

17 **Q.** Before we took a quick break, we were talking  
18 about the 1995 litigation and the basis of that verdict  
19 being -- or the subject of that litigation being the  
20 articles of agreement and the deed between Fisher & Young  
21 and Albert T. Carlisle, correct?

22 **A.** Correct.

23 **Q.** And did you have an opportunity to review the  
24 deed and the articles of agreement between Fisher & Young  
25 and Albert T. Carlisle?

55

1 A. Yes.

2 Q. And I believe in the articles of agreement and in  
3 the deed from Fisher & Young to Albert T. Carlisle the  
4 timber and trees on the Carlisle or Clough Farm had been  
5 excepted and reserved onto Fisher & Young. Is that your  
6 understanding as well?

7 A. That is correct.

8 Q. Is it your understanding that the deed from  
9 Albert T. Carlisle to Fisher & Young, Inc. is the source  
10 deed for Fisher & Young -- the source deed granting Fisher  
11 & Young, Inc. the interest in the timber and trees on the  
12 Carlisle Farm?

13 MR. GING: The question was is it your  
14 belief that the deed from Carlisle to Fisher & Young was  
15 the source deed?

16 Q. I'm sorry, is it your understanding, in the 1995  
17 litigation, based on the deed from Fisher & Young to  
18 Carlisle that that deed was the source deed by which Fisher  
19 & Young, Inc. acquired the rights to the timber to the  
20 Clough/Carlisle Farm?

21 A. Yes, together with the agreement of sale.

22 Q. Okay. What interest did you know or do you know  
23 what interest Fisher & Young, Inc. had acquired from Marion  
24 Kinkead regarding the timber and trees to the  
25 Carlisle/Clough Farm?

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1 A. In what time period?

2 Q. When Mrs. Kinkead sold whatever interest she held  
3 in the property to Fisher & Young.

4 A. Okay, are you talking about back in '86 or '95 or

5 --

6 Q. The 1968.

7 A. Okay, are you asking me like today presently?

8 Q. Yes, today.

9 A. Okay, not at any particular time period -- okay,  
10 can you state the question again?

11 Q. We were talking about the 1995 litigation.

12 A. Right.

13 Q. And we are talking about that litigation being  
14 based on the deed between Fisher & Young, Inc. and  
15 Carlisle?

16 A. Right.

17 Q. And my question was, is it your understanding or  
18 your belief that that deed was the source deed by which  
19 Fisher & Young acquired rights to the timber on the Clough  
20 Farm?

21 MR. GING: I'm going to object to the form  
22 of the question. It's asking for a legal conclusion and an  
23 opinion, but you can answer it, if you can.

24 A. My basis for saying that Matson owns the timber  
25 on the Clough Farm is based upon the certificate of title

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1 that John Kookogey gave, plus a review of the articles of  
2 agreement and the deed from Fisher & Young to Albert  
3 Carlisle.

4 That's really the basis of my belief because I have  
5 never done a title search.

6 Q. I'm going to show you, I guess in reverse order,  
7 Exhibit 14, which is an article of agreement, dated April  
8 1, 1968 between Marion C. Kinkead and Fisher & Young, Inc.,  
9 and then Exhibit 12 appears to be the subsequent deed  
10 relating to that article of agreement. The deed is dated  
11 April 20 -- I'm sorry, that's not correct.

12 What I have handed you appears to be an article of  
13 agreement between Marion C. Kinkead and Fisher & Young.

14 A. Yes, Marion Kinkead and Fisher & Young, yes.

15 Q. That's dated April 1st, 1968?

16 A. This is for 25,000.

17 Q. Does that article of agreement include in its  
18 sale any timber and trees to the Carlisle property?

19 A. This does not include the trees, the timber and  
20 trees.

21 Q. Okay. Would you agree that if Fisher & Young,  
22 Inc. had not acquired rights to the timber and trees to the  
23 Clough Farm from Mrs. Kinkead that they would not be in a  
24 position to transfer any interest in the timber and trees  
25 to Bert Carlisle at the time they sold it to him?

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1 MR. GING: I am going object to the form of  
2 the question as asking him to speculate, asking for a legal  
3 conclusion and asking for an opinion.

4 You may answer the question, if you can.

5 A. Okay, again, my basis to believe that Matson owns  
6 the timber and trees is based upon John Kookogey's  
7 certificate of title and the article of agreement and deed  
8 from Fisher & Young, Inc. to Albert Carlisle. I have not  
9 done an independent title search.

10 Q. As far as you know, no one on behalf of Matson  
11 Lumber Company or Matson Hardwoods has done an independent  
12 title search on the property other than what may have --  
13 other than what they may have received from the McChesney  
14 litigation?

15 A. I know that I never did a title search for Matson  
16 Lumber Company or Matson Hardwoods, Inc. on the Clough  
17 Farm.

18 Q. As a corporate designee, for purposes of today's  
19 deposition, did you inquire as to anyone from Matson Lumber  
20 Company whether they had requested or had performed a title  
21 search or a title abstract on the Clough Farm?

22 A. I would be the person that would recommend that

23 --

24 Q. Okay.

25 A. -- on behalf of the corporation, normally. So, I

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1 would say, no.

2 Q. I guess my question was more specific. For  
3 purposes of today's deposition, did you make any inquiry to  
4 any Matson representative or employee as to whether they  
5 had ever, not using you or independently of you, ever  
6 requested or secured a title search or title abstract on  
7 the Clough Farm?

8 A. I didn't ask anybody that.

9 MR. GING: I have made that inquiry, and I  
10 can represent to you, as counsel, that if it would be done,  
11 John would be the one that would do it and that no such  
12 request had ever been made of anybody else.

13 Q. My understanding, so I can complete this line of  
14 thought, is that that is true even as of today?

15 A. Correct.

16 Q. Have you ever seen the document that is marked as  
17 Exhibit, I believe it's 14?

18 A. Yes.

19 Q. When is the first time that you would have seen  
20 that document?

21 A. It would have been in 2003.

22 Q. What would be the circumstances by which you  
23 reviewed that document?

24 A. Either Lauri Sekerak sent me this or a copy of it  
25 was in John Kookokey's file. I'm not sure the recorded

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1 copy was in his file, though. I have seen this because I  
2 remember this for \$25,000. This was for the land itself.  
3 I definitely remember seeing this.

4 Q. I will show you what we have marked as Exhibit  
5 13, and I will represent to you that that appears to be a  
6 copy of the article of agreement between Marion C. Kinkad  
7 and Fisher & Young, Inc., also dated in April, I believe,  
8 of 1968.

9 Have you ever seen a copy of that document before?

10 A. Yes.

11 MR. GING: Just for the record, it's the  
12 front page of the article of agreement.

13 A. Yes.

14 Q. What were the circumstances by which you saw or  
15 reviewed that document?

16 A. When I went over and met with John Kookokey in  
17 May of 2003, he gave me this file, and I think this was in  
18 it.

19 Q. Do you know if you had a copy of the article of  
20 agreement that contained more pages other than what you see  
21 there?

22 A. I don't recall that. Whatever is in the file,  
23 that's what I found.

24 Q. Do you recall ever seeing a copy of article of  
25 agreement that's marked as Exhibit 13 that bears any

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1 recording stamp by any recorder of deeds?

2 A. I recognize this. I don't know if this has ever  
3 been recorded or not.

4 Q. And the exhibit that you're holding that's  
5 Exhibit 13, does that purport to be an article of agreement  
6 between Marion C. Kinkead and Fisher & Young regarding  
7 timber and trees on the Clough Farm?

8 A. Yes.

9 Q. All right. And does that document purport to  
10 give Fisher & Young, Inc. the right to timber  
11 Mrs. Kinkead's property for a period of time up to until  
12 April 1, 1978?

13 A. Yes.

14 Q. Are you aware or have you ever seen, up until  
15 today, any other document purporting to transfer any rights  
16 whatsoever between Marion C. Kinkead and Fisher & Young,  
17 Inc. for an interest in timber on the Clough Farm other  
18 than the documents that you have in your hand, one for the  
19 land and one for the timber?

20 A. The last deed in the chain of title.

21 Q. I will show you what I have marked as Exhibit No.  
22 12 and ask you if you can identify that document?

23 A. Yes. This is the deed that Lauri Sekerak sent to  
24 me in 2003.

25 Q. Can you identify that deed, the date and who it

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1 is between?

2 A. From Marion C. Kinkead to Fisher & Young, Inc.,  
3 and it's dated April 20, 1973.

4 Q. Does that deed appear to have been recorded?

5 A. Yes.

6 Q. Does it have the date of recording on it?

7 A. Yes. It's April 23, 1973.

8 Q. So, it appears, then, that a timber deed was  
9 created between Marion C. Kinkead and Fisher & Young, Inc.  
10 in 1973 and was recorded in 1973, correct?

11 A. Correct.

12 Q. Do you know if that deed was created and recorded  
13 before or after Mr. Carlisle purchased the land from Fisher  
14 & Young, Inc.?

15 A. He purchased the land in 1969.

16 Q. So that deed would have been created and filed  
17 after Mr. Carlisle purchased --

18 MR. GING: Excuse me, I object to the form  
19 of the question in terms of created. I don't think that we  
20 have established the basis for Mr. Dennison knowing the  
21 deed was actually created.

22 You can answer the question.

23 A. The deed is dated April 20, 1973. It's notarized  
24 on April 20, 1973. It has an official seal on it, and it  
25 appears to be recorded on April 23, 1973.

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1 Q. Okay. Again, the deed that you're holding in  
2 your hand, if I'm correct, grants or purports to grant  
3 Fisher & Young, Inc. the rights to timber the timber and  
4 trees on the Kinkead land up until April 1st of 1978,  
5 correct?

6 A. That's what it says.

7 Q. Okay. You indicated that that was, I believe  
8 your words was the last deed of record?

9 A. Yes, that is what Lauri Sekerak sent to me.

10 Q. When did you contact Ms. Sekerak?

11 A. It was in late 2002 or early 2003.

12 Q. And as I understand it, your request to her  
13 originally was a copy of the timber deed between Fisher &  
14 Young, Inc. and Fisher & Young Hardwoods, Inc. which he  
15 returned to you was actually the document that you are  
16 holding in your hand, 1973, between Marion C. Kinkead and  
17 Fisher & Young, Inc.?

18 A. That's what I recall.

19 Q. When you obtained that deed, did you then review  
20 it?

21 A. Yes.

22 Q. And did you contact anybody at Matson Lumber  
23 Company regarding that deed?

24 A. I don't know that -- I don't know that I  
25 contacted anybody from Matson Lumber Company. I cannot

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1 recall specifically doing that.

2 Q. Okay. There is attached to the Notice of  
3 Deposition today Exhibit A, which is a copy of a quit claim  
4 between Dora Squatriti, who is the executrix of the estate  
5 of Marion C. Kinkead and Matson and, again, dated May 6 of  
6 2003. Have you seen that document before?

7 A. Yes.

8 Q. And did you create that document?

9 A. I prepared it.

10 Q. What were the circumstances by which that  
11 document was prepared?

12 A. After Lauri Sekerak sent this deed to me, as I  
13 said before, I assumed that the deed was somewhere between  
14 Fisher & Young and Fisher & Young Hardwoods, Inc. So,  
15 that's why I started looking through the file, and when I  
16 looked at the certificate of title, it mentioned that John  
17 Kookogey had had some deeds. So, on that basis, I  
18 contacted him.

19 Q. Okay.

20 A. Then, I went over on May 6 and met with him at  
21 his old office, and we sat in his conference room and I  
22 asked him if he had the deeds that are recited in his  
23 certificate of title, and he didn't know. So, we sat down,  
24 and one of the first or second files we opened up, there  
25 were all these deeds sitting in there. One of the deeds



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1 was the Fisher & Young to Fisher & Young Hardwoods, Inc.  
2 deed.

3 I can't -- I wish we could find it, and I'm sure we  
4 will, but I looked at that deed and I didn't think that it  
5 said what I thought it should say.

6 Q. I'm sorry, what was that?

7 A. I can't remember, but it didn't -- because, see,  
8 this deed terminated in 1978.

9 Q. Correct.

10 A. Okay. So, this is one of these deals where maybe  
11 something seems to be not right, but once you put it under  
12 the microscope, everything gets resolved and you realize it  
13 was okay after all. That's what I expected.

14 Q. Okay.

15 A. Because Mr. Kookogey and I talked about the  
16 original deal, and looking at the file, they had split this  
17 transaction into two parts to avoid paying the transfer  
18 tax, which is what everybody does because there's that  
19 specific exemption in the Realty Transfer Tax Act that you  
20 can exempt out timber as long as the cutting takes place  
21 within an immediately ascertainable date.

22 Q. I'm sorry, is the reason for that that if there  
23 is an ascertainable date timber is considered, at least by  
24 the taxing authorities, to be personally as opposed to  
25 realty and, therefore, no transfer tax would be due on the

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1 transfer in the interest of real property?

2 MR. GING: I am going to object to the form  
3 of the question. It's asking Mr. Dennison to give an  
4 opinion as to how the realty transfer tax bureau thinks and  
5 opines about these transactions, but if you can answer the  
6 question ...

7 A. I know, based upon the exemption -- or based upon  
8 that provision of the statute, if you set up the  
9 transaction that way, the timber is exempt.

10 Q. Okay.

11 A. So, that's what everybody that transfers real  
12 estate and timber up here does, take advantage of that  
13 exemption.

14 Q. Okay.

15 A. So, that's what Mr. Kookogey and I talked about,  
16 and that was the reason why this was split into different  
17 categories.

18 They did it through an article of agreement, I think,  
19 because to make certain that she was going to get all her  
20 money before she transferred the timber.

21 So, when I looked at the deed, I realized that it  
22 didn't cure the problem with the timber going back to her  
23 in 1978. The Fisher & Young -- excuse me, the Fisher &  
24 Young and Fisher & Young, Hardwoods, Inc. didn't help at  
25 all.

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1 So, in looking at this deed, I said to him because I  
2 went back and when I looked at it before, I said to him, I  
3 said, well, this right to cut the timber and everything  
4 terminates on April 1st, 1978, and at that time, all the  
5 rights should cease and that the remaining timber shall  
6 vest in the grantor, who was Mrs. Kinkead, her heirs and  
7 assigns.

8 He said to me, I never noticed that before, that's a  
9 mistake.

10 So, read literally, then, in other words, it should  
11 have vested back into Fisher & Young. So, on that basis, I  
12 went to Warren County to look up if Marion Kinkead had died  
13 because I didn't know anything about her.

14 So, when I got to the courthouse, I asked for Lauri  
15 Sekerak because I'm not familiar with -- I mean, I can  
16 figure it out, but it's easier to have an abstractor help  
17 you. So, she happened to be in the courthouse, and I said,  
18 Lauri, can you help me look up the name of an individual  
19 Marion Kinkead? So, she said she would help me get the  
20 estate papers out.

21 So, I looked at the will, and Dora Squatriti was the  
22 only beneficiary, and she was also the executor, and so  
23 then, I went to the telephone directory, looked under  
24 Squatriti, saw her name -- or his name. I can't remember  
25 who it was. Squatriti was such an unusual name, and I

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1 asked somebody how far away she lived, and it was only a  
2 couple blocks away, so I called her. I guess that's when I  
3 called her on the phone. I think someone even knew her in  
4 the courthouse.

5 So, anyway, I got on the phone and I called her and I  
6 explained who I was, that I represented Matson Lumber, and  
7 I asked if I could come and see her. And she said that her  
8 husband was infirmed (phonetic), something to that effect,  
9 and that I could come in like two-and-a-half hours.

10 So, I messed around, waited around for about  
11 two-and-a-half hours. I then went to her house and sat at  
12 the kitchen table with her, explained who I was, who I  
13 represented, a little bit about the company and the fact  
14 that the timber on the Clough Farm, on the basis of this  
15 deed, has reverted to her mother. And she said, That's not  
16 right, my mother sold the timber to Fisher & Young.

17 And I said, Would you be willing to sign a quit claim  
18 deed? And she said, Yes. She said that she would only --  
19 she didn't want anything for it because my mother sold it  
20 to Fisher & Young. She said, I just don't want to have to  
21 pay my attorney a lot of money to review all of these  
22 things. I said to her that I'm sure that Matson Lumber  
23 Company would pay any legal fees or other costs that you  
24 would have in association with getting the quit claim deed,  
25 and she gave me the name of her attorney, and so I left.

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1 Q. The name of her attorney was Attorney Mark  
2 Turbessi?

3 A. Correct.

4 (Deposition Exhibit No. 15 was marked for  
5 identification.)

6 Q. I'm going to show you what I marked as Exhibit  
7 15, which is a letter on your letterhead dated May 8, 2003  
8 to Mr. Turbessi and ask if you can identify that?

9 A. Right. This is what Mrs. Squatriti wanted me to  
10 write to Mr. Turbessi and sort of relate the same thing  
11 that I told her and send the quit claim deed to him, and  
12 that's what I did.

13 Q. At this time, I take it based on your testimony  
14 that you have given so far, you did not, at that time,  
15 request Mrs. Sekerak, or anyone else, to perform a title  
16 search on the Clough Farm to see if maybe there were any  
17 other deeds out there dealing with this property, correct?

18 A. She was quite emphatic that her mother sold the  
19 timber and trees on the Clough Farm to Fisher & Young, Inc.

20 Q. I understand. All I'm asking is whether at that  
21 time, as a result of your reviewing that 1973 timber deed,  
22 whether that caused you, at that time, to ask Ms. Sekerak  
23 or any other abstractor to perform a title search on the  
24 property to see if, perhaps, there were other deeds out  
25 there in this chain of title?

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1 A. No, I didn't ask to do a title search at that  
2 point.

3 Q. Was it your understanding, after reviewing that  
4 1973 deed, that there was a break in the chain of title  
5 from 1978 until the present time with regard to the timber  
6 interest in this property by virtue of that 1973 deed?

7 MR. GING: Excuse me. I will object that  
8 you're asking for a legal opinion and conclusion of law.

9 You can answer the question, if you can, John.

10 A. There was a mistake that resulted in a technical  
11 break of the chain of title. The easiest way to correct  
12 that was to get a quit claim deed from Dora Squatriti, as  
13 executrix and as an individual. That would solve the  
14 problem because, again, based upon Mr. Kookogey's original  
15 certificate of title, which he issued not realizing that he  
16 had made this mistake, once that was corrected, then that  
17 would solve whatever title problems there were purely with  
18 the chain of title itself.

19 Q. Is it your understanding or your testimony that  
20 the certificate of title given by Mr. Kookogey has some  
21 legal effect over the deeds that are recorded of record  
22 with regard to the property?

23 A. It's on the basis that Mr. Kookogey was a  
24 competent attorney who issued a title certificate.

25 But for this error, there was no reason for anyone to

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1 do anything else, especially in view of the fact that the  
2 whole issue had been litigated anyway in the 1995 case and  
3 then in the 1998 case that was filed in Warren County.

4 Q. Okay. Did you have a discussion with  
5 Mr. Kookogey at the time that he acknowledged this mistake  
6 was made about the impact or effect of the deed being filed  
7 in 19373 after Mr. Carlisle had already purchased the  
8 property from Fisher & Young?

9 A. No. I sent him a copy of this May 8 letter that  
10 I sent to Turbessi, just to bring him up to date about what  
11 was going on.

12 Q. Did you raise any questions with regard to  
13 Mr. Kookogey about whether or not the recording statute  
14 would void that 1973 timber deed that was filed after  
15 Mr. Carlisle purchased the property subject to  
16 Mr. Carlisle?

17 A. Did we discuss that?

18 Q. Yes.

19 A. No.

20 Q. And it was your thought, then, as counsel for  
21 Matson, that if a quit claim deed was acquired from the  
22 estate of Kinkead that that would somehow cure the defect  
23 that Mr. Kookogey acknowledged existed in the 1973 timber  
24 deed; is that correct?

25 A. Correct.

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1 Q. And can you tell me how a subsequently acquired  
2 quit claim deed would cure the defect of the 1973 timber  
3 deed?

4 A. Because the original article of agreement was for  
5 the complete sale of the Clough Farm. The only reason it  
6 was split in two agreements was to avoid the transfer of  
7 taxes. So, therefore, but for that mistake, there wouldn't  
8 have been a title problem.

9 Q. We have identified at least what purports to be  
10 the first page of the article of agreement for the transfer  
11 of timber to Fisher & Young from Mrs. Kinkead. I believe  
12 that the language of the article of agreement give Fisher &  
13 Young or transfer to Fisher & Young the right to own timber  
14 until April 1st, 1978, correct?

15 A. Right. That's what you normally do whenever you  
16 do this. You have to have a date certain, and then at that  
17 point, you then structure your agreements so that the  
18 timber rights then vest to whomever you sold the so called  
19 surface to.

20 Q. It appears, then, that the articles of agreement  
21 suffer the same defect that the 1973 timber deed suffered,  
22 and that there was no reversionary interest into Fisher &  
23 Young; is that correct?

24 A. No. I think they set it up that way because the  
25 sale of the surface for \$25,000 was unconditional.

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1 Q. Correct. There were no -- Well, I'm sorry. I  
2 don't mean to -- When you say unconditional, there were no

3 --  
4 A. Reversionary rights.

5 Q. There was no grant of timber interest at all in  
6 the article of agreement for the sale of the land, correct?

7 A. Right. That's why I referred to it just  
8 generally as the surface.

9 Q. Okay.

10 A. So there is an unconditional sale of surface, and  
11 then to avoid paying the transfer taxes, you have to have a  
12 date certain by which the timber can be cut, and that was  
13 1978. And then at that point, the rights cease and then  
14 the interest would then go back to Fisher & Young, Inc.

15 Q. Okay.

16 A. Even though it's the same, same entity that has  
17 the surface and also has the timber rights and when that  
18 terminates, even if it goes into that same entity, it's  
19 still exempt from transfer taxes.

20 Q. The articles of agreement for the sale of the  
21 timber does not have language in it vesting any  
22 reversionary interest into Fisher & Young, Inc., correct?

23 A. It does on or after date of all rights -- Okay,  
24 wait a minute.

25 Okay, the way this was set up was in 1978, Fisher &

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1 Young was supposed to be the owner of the surface.

2 Q. I'm sorry, 19 ...

3 A. '78.

4 Q. '68?

5 A. 1978.

6 Q. In 1978?

7 A. Right. So, when their right to cut the timber  
8 ceased, then it would have reverted to them anyway because  
9 they were the owner of the surface.

10 Q. As long as they were the owner of the surface in  
11 1978, correct?

12 A. Right.

13 Q. I understand.

14 A. That's in 1968. That's the way they set this up,  
15 that supposedly Fisher & Young was going to be the owner of  
16 the surface in 1978.

17 Q. Okay. As I understand it, the articles of  
18 agreement for the sale of the real estate then or the land  
19 were recorded -- the articles of agreement for the timber  
20 was unrecorded?

21 A. Again, that makes it really slick or whatever  
22 because this thing -- nobody records the timber deeds or  
23 the agreements regarding the agreement for the sale of the  
24 timber or the timber deed itself. You don't record that  
25 because it sort of terminates on its own and then the

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1 surface owner and the timber get reunited.

2 **Q.** How do you address the situation where there is a  
3 subsequent purchaser who is without notice of the  
4 unrecorded agreements?

5 **MR. GING:** Again, I am going to object to  
6 the form of the question as asking for a legal opinion.

7 **A.** Well, I guess in this particular case, Carlisle  
8 never got the timber because they were specifically  
9 excepted and reserved in his deed, and he also took the  
10 property subject to the terms in the agreement of sale.

11 So, he never, in all the world, the one person that we  
12 know who didn't own the trees and timber were Carlisle  
13 because they were specifically excepted and reserved.

14 **Q.** On the assumption that Fisher & Young had  
15 acquired all right, title and interest in the timber from  
16 Kinkead, correct?

17 **A.** Yes, that she had the full right, that she owned  
18 the title to the surface and the timber.

19 **Q.** And that she had granted to Fisher & Young the  
20 full right in both the surface and the timber?

21 **A.** That's what she contracted to do.

22 **Q.** Okay. As it turns out, at least upon your review  
23 of the documents, there was a problem because the  
24 reversionary interest was not to the owner of the land,  
25 whoever that may have been in 1978, but was, in fact, to

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1 Mrs. Kinkead and her heirs, correct?

2 **A.** Correct, because he made a mistake on this back  
3 here (indicating).

4 **Q.** At the time that you contacted Ms. Sekerak and  
5 Mrs. Squatriti, did you review the records at the Warren  
6 County Courthouse to see if, in fact, any reversionary  
7 interest in the timber and trees had ever been claimed or  
8 recorded by the estate in the estate filings?

9 **A.** My mind set was that this was 100 percent a  
10 mistake. That's not something that would have even entered  
11 my mind.

12 **Q.** Okay. I guess my question is, if you're getting  
13 a deed from the estate, did you check to see if the estate  
14 listed the interest that you're acquiring as an asset of  
15 the estate?

16 **A.** That's not something that I would have thought to  
17 do.

18 **Q.** Okay. So, as I understand it, you prepared the  
19 quit claim deed?

20 **A.** Yes.

21 **Q.** And then that quit claim deed apparently was  
22 executed around May 6 of 2003?

23 **A.** I think that's the date. I think that's when I  
24 actually saw Mr. Kookogey, and I think that's the date of  
25 it. I don't know when. It took a while.

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1 I had to contact Mr. Turbessi because it didn't come  
2 back right away, so I called him on the phone. He said  
3 that everything is okay. He said, Oh, by the way,  
4 Mr. Carlisle or representatives of Mr. Carlisle had  
5 contacted Mrs. Squatriti or him, I can't remember which --  
6 no, I guess they contacted her and had agreed to pay money  
7 to acquire a quit claim deed, but I specifically remember  
8 him saying she would not sell "them" the property, she  
9 didn't like them.

10 Q. Okay.

11 A. And I always wondered who she said "them" because  
12 it was Albert Carlisle, and I didn't know if it was anyone  
13 else or not who she was referring to.

14 Q. As I understand it, that deed was subsequently  
15 recorded more than six months after the date it was  
16 executed; is that correct?

17 A. I don't know. Is that how long it was? It took  
18 a while to get it back from her.

19 Q. Okay.

20 A. Okay. It took a while to get it back from her,  
21 and then there was question whether I need a transfer tax.  
22 I had to go through that rigmarole with the transfer tax  
23 people.

24 Q. Okay. This also occurred in 2002, 2003?

25 A. This whole thing started with the conversation

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1 that I had with Peter Crems in late 2002 or early 2003.

2 Q. Okay. It's my understanding, then, at least  
3 based on what I have seen and based on your testimony, that  
4 in 1995 when the Federal Court litigation was commenced and  
5 in 1997 when the Federal Court litigation was going to  
6 trial, the 1973 timber deed would have been filed as of  
7 record with the Warren County Courthouse and would appear  
8 in the chain of title for the Clough Farm; is that correct?

9 A. Yes, I believe that's in file of record. I  
10 believe that's a true statement.

11 Q. It would also be my understanding that at the  
12 time of the 1995 litigation, when that case went to trial,  
13 Matson Lumber Company was at least in possession of the  
14 original articles of agreement between Marion C. Kinkead  
15 and Fisher & Young, Inc. for the transfer of the land dated  
16 April 1, 1968, based on the list of exhibits that was  
17 prepared by Mr. Fossee?

18 A. Yeah. I mean, that appears on the list of  
19 exhibits. When he got that, I have no idea.

20 Q. That's the same articles of agreement that we  
21 discussed whereby all the timber and trees are excepted and  
22 reserved on to Marion C. Kinkead?

23 A. That's -- they are both dated April 1st, 1968. I  
24 don't know whether that's the one for the surface and one  
25 for the --



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1 Q. It's the one for the land as a consideration of  
2 \$25,000, I believe?

3 A. Yeah, that's the one for the land. That's the  
4 exhibit number -- is that Exhibit No. 3?

5 Q. Yes.

6 A. Okay, whatever. You have the list there.

7 Q. Okay. It's the deed dated 27th day of March  
8 1969, Marion C. Kinkead and Fisher & Young, consideration  
9 of \$25,000 for the land excepting and reserving from that  
10 conveyance all of the timber and trees on the property?

11 A. Can you say that again? I was thinking something  
12 else.

13 Q. The exhibit is a copy of the deed that was

14 recorded April 22, 1969, but it's dated the 27th of March  
15 1968 between Mrs. Kinkead and Fisher & Young, Inc. -- I'm  
16 sorry '69?

17 A. Uh-huh. (Affirmative.)

18 Q. -- between Mrs. Kinkead and Fisher & Young, the  
19 consideration of \$25,000, and it's the transfer of what you  
20 called the land?

21 A. Right, the surface.

22 Q. The surface, which excepts and reserves from the  
23 surface then all the timber and trees on the property?

24 A. Uh-huh. (Affirmative.)

25 Q. Okay. And you don't recall Mr. Fossee ever

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1 raising an issue with either yourself or Matson Lumber  
2 Company about where is a deed or written document that  
3 actually transfers an interest of timber to Fisher & Young,  
4 Inc. at the time of the 1997 trial?

5 A. Right. The first time that there was ever an  
6 issue regarding the title to the timber was after I  
7 received that phone call from Peter Crenns. That was the  
8 first time this was ever an issue.

9 Q. Okay. As far as you're aware, the chain of title  
10 for the Carlisle property has remained the same from 1995  
11 until the recording of this quit claim deed that was  
12 secured by Matson Lumber Company from Dora Squatriti and  
13 subsequently recorded in 2004?

14 A. Okay, based upon my conversation with Dora  
15 Squatriti, I know for a fact that she didn't transfer --  
16 didn't make a transfer of any interest in the Clough Farm  
17 trees because she told me that her mother had sold those to  
18 Fisher & Young, so there was no reason for me to check  
19 anything else.

20 Q. Okay. In Exhibit No. 15, which is your May 8th  
21 letter to Attorney Turbessi, the third paragraph states,  
22 "In order to avoid paying the transfer taxes, the timber  
23 was sold to Fisher & Young, Inc. by an unrecorded Article  
24 of Agreement for \$100,000."

25 Was that a conclusion that you drew, or was that



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1 something that was told to you by somebody else?

2 **A.** That's what Mr. Kookogey and I discussed, and I  
3 could tell by even the material that I got from  
4 Mr. Kookogey that that's what they intended to do because I  
5 think the original article of agreement wasn't split. And  
6 I think Kookogey, as I recall, must have said something to  
7 the other attorney and said, let's split them.

8 **Q.** Okay. Now, we've identified what you believe to  
9 be were two problems that arose resulting from the 1973  
10 timber deed. The first one we talked about was the fact  
11 that the reversionary interest was not into Fisher & Young  
12 or even the owner of the land for that matter, but  
13 Mrs. Kinkead.

14 The second problem that you set forth in your letter  
15 deals with the diameter of the timber. I was just  
16 wondering if you can tell us what that is about.

17 **A.** I haven't looked at this in so long.

18 Now, the timber deed, I don't remember. That must  
19 have the Fisher & Young to Fisher & Young Hardwoods, Inc.  
20 timber deed. The timber dated -- okay, that's the '73.

21 Okay, yeah. The deed for the -- the deed for the  
22 timber -- the deed for the surface, where is it? From  
23 Marion Kinkead, it excepts and reserves all the trees.  
24 This is it. It excepts and reserves all the trees,  
25 excepting and reserving from all the timber and trees

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1 standing and down.

2 So, she reserved all the timber and trees, but then  
3 this deed would have only transferred all the timber and  
4 trees measuring twelve inches one foot above the ground  
5 back. So, it was not right that way, either.

6 **Q.** So, there were two issues that you were concerned  
7 with: The 1973 timber deed, the first one being  
8 reversionary interest and the second one being the original  
9 agreement, except and reserve to Kinkead all timber and  
10 trees and she only granted the right to Fisher & Young an  
11 interest in trees 12 inches in diameter and above.

12 **A.** Yeah, because a lot of times, to avoid paying the  
13 transfer taxes, you are dealing with merchantable timber,  
14 timber that can be cut. That would be 12 inches and up.  
15 That's why -- but they didn't -- somebody -- they didn't do  
16 that quite right.

17 **Q.** As I understand it, then, other than this Fisher  
18 & Young to Fisher & Young Hardwoods deed, which we can't  
19 seem to locate right at the moment, which I understand was  
20 unrecorded anyway?

21 **A.** Right.

22 **Q.** Are you aware of any other deeds purporting to  
23 transfer an interest to anybody from anybody any interest  
24 in the timber and trees on the Clough/Carlisle Farm other  
25 than what we have looked at today, and recognizing there

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1 may be an unrecorded deed from Fisher & Young to Fisher &  
2 Young Hardwoods?

3 A. Nothing except the real old deeds that were in  
4 John Kookogey's file, copies of some real old deeds.

5 Q. Further back in the chain of title?

6 A. Yes.

7 Q. So, as I understand it, then, based on the  
8 documents that we have at the time, at least as far as we  
9 know, Marion Kinkhead was the last owner of both the land  
10 and timber?

11 MR. GING: I will object to the question for  
12 asking for a legal opinion and conclusion.

13 You can answer it, if you can.

14 Q. Based on the articles of agreement that she  
15 signed with Fisher & Young, I guess we'll use those  
16 documents as the basis of that, if she didn't own the  
17 timber, I guess we can go further back.

18 A. No. To me, as an attorney, Fisher & Young owned  
19 everything. That's what Marion Kinkhead sold; that's what  
20 Fisher & Young purchased.

21 Q. I understand what your testimony is. I'm just  
22 trying to, with regard to the documents that we are aware  
23 of or that have come to light, Mrs. Kinkhead, by virtue of  
24 two different agreements, transferred whatever interest she  
25 owned in the farm to Fisher & Young?

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1 A. Right.

2 Q. For the sake of today's argument, based on what  
3 we know, she purportedly owned the timber. We can go back  
4 and look at the deeds to confirm that. And maybe she  
5 didn't own the timber at the time she sold, but she  
6 purported at the time to own both the timber and the land  
7 and to sell that to Fisher & Young?

8 A. Yes.

9 Q. It was done in two transactions?

10 A. Right.

11 Q. The only transaction that was recorded of record  
12 and put on notice was the sale of the land to Fisher &  
13 Young, correct?

14 A. Well, again, when you speak in terms of the other  
15 person that was interested in this would have been Albert  
16 Carlisle, that he took this property under subject to an  
17 exception and reservation for all the timber.

18 Q. I understand. Fisher & Young excepting and  
19 reserved whatever interest Fisher & Young, Inc. had in the  
20 timber at the time they sold the property to Carlisle?

21 A. They excepted and reserved their ownership of the  
22 timber when they sold the property to Carlisle.

23 Q. And their ownership can be defined only by the  
24 agreement with which they take title to it, correct?

25 A. No. That's a pretty narrow way of saying it, so

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1 I cannot really agree with that.

2 Q. Okay. It's your testimony, your understanding  
3 that despite what the written agreements were and what may  
4 or may not have been recorded, Fisher & Young purchased  
5 more than what these documents would indicate they actually  
6 got?

7 We have already acknowledged that there was a mistake  
8 in the deed that was made.

9 A. See, to me, I don't see that mistake as being so  
10 critical as to defeat Fisher & Young's right, title and  
11 interest to the timber because it was a technical mistake  
12 because all the documents indicate that they simply did  
13 this to avoid paying the transfer of taxes and that both  
14 the seller and the buyer -- the seller wanted to sell  
15 everything she owned and the buyer wanted to acquire  
16 everything that she owned, and that's what all the  
17 documents say.

18 So, because of that one little mistake, to me, doesn't  
19 -- shouldn't create some huge problem to deny ownership of  
20 the property, of the timber.

21 Q. If Mr. Carlisle is searching the title in order  
22 to buy the property from Fisher & Young, the only agreement  
23 that we are aware of that's of record is the deed between  
24 Mrs. Kinkoad to Fisher & Young for \$25,000 for the land,  
25 correct?

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1 A. Say that again.

2 Q. We are only aware of, in 1970 when Mr. Carlisle  
3 purchases the land from Fisher & Young, that the only deed  
4 that is of record is the deed dated March 27th, 1969  
5 between --

6 A. Right.

7 Q. -- Kinkoad and Fisher & Young?

8 A. Right.

9 Q. So, when the title is being searched, the only  
10 title -- the deed that's going to be of record at that time  
11 is the deed for the land, correct?

12 A. Right.

13 Q. And this deed, I think we have already  
14 established excepts and reserves all of the timber and  
15 trees from the land to Mrs. Kinkoad, correct?

16 A. Yes.

17 Q. Okay. So, if you would go, then, and look at the  
18 deed from Carlisle to Fisher & Young and you're doing a  
19 title search --

20 A. Carlisle to Fisher & Young?

21 Q. I'm sorry, from Fisher & Young to Carlisle, the  
22 deed, the first deed in your chain of title going backwards  
23 then is going to be, at least as far as we know from the  
24 records, this deed between Kinkoad and Fisher & Young?

25 A. That would be the first deed, right, going

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backwards.

Q. The deed to the land then excepts and reserves the timber and trees from Kinkead to Fisher & Young and

then the deed from Fisher & Young to Carlisle excepts and reserves the timber and trees, correct?

A. The deed from Fisher & Young to Carlisle excepts and reserves the timber and trees.

Q. All right. And in reviewing whatever documents are of record, just being that deed, Fisher & Young, at least based on the recorded deeds had no interest in the timber and trees by recorded instrument by which they could transfer them to Mr. Carlisle?

MR. GING: I am going object to the form of the question as being argumentative and asking for a legal opinion.

You may answer the question.

A. There -- that is a statement of fact. The only thing of record would have been that deed with that exception of reservation on it, but, of course, you have to go beyond that and find out where the trees are -- in whose name the trees are vested.

Q. And to do that, you would search the title. That is a matter of public record to put the public on notice all interests that have been transferred are required to be in writing, transfer property and record it, correct?

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A. No. In the transfer of land, the title search comes at the very end. It's the discussions between the purported seller and the owner -- or the purchaser come first and the seller tells the owner, I own everything.

Q. Okay.

A. And then it's up to the buyer to conduct a title search to determine whether or not the seller is really telling the truth.

Q. Based on the title search that could have been done in this case, the title search would have revealed that, in fact, Fisher & Young didn't own the timber?

MR. GING: Excuse me. I am going to object to the question as being speculative, argumentative and asking for a legal opinion.

You can answer the question, if you can.

A. Mr. Carlisle didn't buy this property in a vacuum. He had ongoing discussions with the purported owner, which was Fisher & Young, Inc. He knew --

Q. I'm sorry --

MR. GING: Let him finish his answer.

A. Yeah. He knew that Fisher & Young owned the trees.

Q. The basis -- were you present representing either Fisher & Young or Mr. Carlisle at the time of the purchase?

A. No, but I read the Federal District Court

transcript.

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Q. So, any knowledge that you have or purport to have of what occurred between the sale between Fisher & Young and Mr. Carlisle is based solely on what you have read in a court document?

A. Right, and common sense is that when he bought this property, he wanted to know who owned from heaven to hell, and he is going to find that out.

When he and his attorneys couldn't establish of record who owned the timber, then they would have asked Fisher & Young, Where is your deed for the timber?

So, I don't know what discussions took place among the attorneys, but, obviously, since he didn't buy the timber by virtue of the agreement of sale and the exception and reservation of this deed, he knew he didn't own the timber.

Now, how he came about that realization and how he came to know that Fisher & Young was the owner, based upon his testimony, I have no idea because you're right. I wasn't there.

Q. I'm just trying to establish what documents are of record.

A. As far as we know, as of the time that Mr. Carlisle purchased the property, the only documents of record is the deed between Kinkead and Fisher & Young for the land?

A. Yeah. The records in the courthouse speak for

themselves.

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Q. And the next deed then would be between Fisher & Young and Carlisle?

MR. GING: Jim, we are starting to go over this again. It's repetitive.

MR. FRYLING: Objection noted.

A. Which deed are you talking about?

Q. The deed between Fisher & Young to Carlisle.

A. You mean the Fisher & Young and Carlisle, okay, because you have the deed from Marion Kinkead to Fisher & Young, Inc. for the land, and then, you have the deed onto Mr. Carlisle and the agreement of sale in May of 1969.

Q. Correct.

A. Correct.

Q. Are you aware of any other deeds dealing with either the land or the timber that had been recorded as of that date?

A. No.

Q. The next deed that we have then would be after acquired 1973 timber date, correct?

A. Correct.

Q. And then until the quit claim deed was filed, there are no other deeds filed in-between those two dates, as far as we can --

A. Not to my knowledge.

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MR. GING: Excuse me. I'm going to object to the question as being argumentative, especially in light of the discussion that we had of other deeds earlier in the deposition, specifically Exhibit 6, Exhibit 7, and I believe there was one other deed that was recorded that you had discussed with Mr. Dennison. To the extent that it's argumentative now, I will make that objection.

You can answer the question.

A. Yeah, we are talking about between Carlisle and Kinkead.

Q. We are talking about deeds in the chain of title that appear of record in the chain of title for the Carlisle/Clough Farm.

A. Well, there are a lot of -- I mean, you're right, we have identified other deeds that I did in 1993, so there is other deeds that impact this property.

Q. Do you know, and maybe you can't because you haven't done a title search, do you know whether or not those deeds appear in the chain of title for the Clough Farm?

In other words, if an abstract would be requested to search the title from typically the beginning of time or the land warrants until today whether those other deeds that we have marked 6, 7 and 8 whether those deeds would appear in the chain of title?

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A. They should. It's been recorded.

MR. FRYLING: Okay, that's all I have.

#### EXAMINATION

BY MS. COCO:

Q. Mr. Dennison, Mr. Fryling had asked you a question that you answered with respect to a conversation that Mrs. Squatriti told you that Carlisle or a representative of Carlisle contacted her about the land, correct?

A. Mark Turbessi told me about that.

Q. Do you know when that conversation between Mr. Carlisle or his representatives and Mrs. Squatriti occurred?

A. It was after I contacted Mrs. Squatriti.

Q. Just refresh my memory. When was that?

A. That was in May. I think that was on May 6, 2003. So, it was in-between that time and the time Mrs. Squatriti signed the deed because when I spoke to her, no one else had contacted her as of May 6, 2003 about the property.

Q. Okay. To the best of your knowledge, a reformation action has never been filed regarding any of these documents; is that correct?

A. Not to my knowledge.

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1 Q. When Mr. Frying --

2 MR. FRYLING: I'm sorry, I wasn't clear on  
3 that question. By anyone, or about somebody specific?

4 MS. COCO: By anyone.

5 A. When you say reformation, there are all these  
6 quiet title actions and all these other things going on,  
7 but I don't know when you say reformation --

8 Q. We have talked about several lawsuits that have  
9 been filed between Mr. Carlisle and Matson and Matson and  
10 Mr. Carlisle, but has there ever been a specific  
11 reformation action to correct any of the mistakes in any of  
12 the documents or alleged mistakes?

13 A. Well, I guess the 1995 Court action. None that  
14 we haven't talked about.

15 Q. Okay. And Mr. Frying asked you about the 1973  
16 deed of record, or deed that was filed of record, and he  
17 said it would have been filed in the 1995 litigation and it  
18 would have been filed during the 1998 litigation?

19 A. You mean it was recorded of record?

20 Q. Recorded of record at that time.

21 A. Right, because it was recorded in 1973, I think.

22 Q. And that would be true -- his question would be  
23 true with respect to any of the litigation, the McChesney  
24 litigation or anything, that deed would have been filed of  
25 record at that time from 1973 --

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1 A. Right, yes, because that was all in the '80s.

2 MS. COCO: That's all I have.

#### 3 EXAMINATION

4 BY MR. GING:

5 Q. Mr. Dennison, did Mrs. Squatritti's lawyer give  
6 you any explanation as to why Mr. Carlisle or his  
7 representatives were trying to buy something he already  
8 believed he owned, that is, the timber on the property?

9 MR. FRYLING: I will object to the form of  
10 the question. He hasn't testified as to -- that he has any  
11 knowledge as to why Mr. Carlisle may or may not have  
12 contacted him.

13 MR. GING: Well, that's what I'm asking him.

14 MR. FRYLING: The question was in the form  
15 of why he would buy something he doesn't already own, and I  
16 object to the form of the question. He hasn't testified  
17 that any of that was discussed.

18 MR. GING: Okay.

19 THE WITNESS: Okay, repeat your question

20 then.

21 BY MR. GING:

22 Q. Did Mrs. Squatritti's lawyer offer any explanation  
23 as to why Mr. Carlisle or his representatives were trying  
24 to buy something Mr. Carlisle claimed he already owned?  
25



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1 MR. FRYLING: Again, object to the form of  
2 the question.

3 A. I think I talked to him about the fact that

4 Mr. Carlisle -- I knew that Mr. Carlisle had done a title  
5 search on this property, based upon what Lauri Sekerak told  
6 me -- or someone had told me that, and I think that Mark  
7 Turbessi and I talked about that because he said somebody  
8 from Carlisle had contacted Mrs. Squatiti, and I think I  
9 said, I'm not surprised or something like that. But beyond  
10 that, I don't have any recollection.

11 Q. All right. Is there anything that you're aware  
12 of that would have prohibited Mr. Carlisle from inquiring  
13 into the status of the timber ownership in 1969 when he  
14 bought the property?

15 A. That's the first thing that happens generally  
16 between the seller and the buyer, you discuss what you're  
17 buying.

18 MR. FRYLING: I object based on the answer  
19 calls for speculation as to what Mr. Carlisle did or didn't  
20 do in 1969.

21 BY MR. GING:

22 Q. Is there still a Matsen Hardwoods?

23 A. No.

24 Q. And Amy may have asked this question, but is  
25 there anything, that you are aware of, that precluded Mr.

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1 Carlisle from doing a title search during the McChesney  
2 litigation?

3 A. No.

4 Q. Now, the McChesney litigation, I believe  
5 according to the questions Mr. Fryling had asked you,  
6 occurred in 1986, is that correct, in or about?

7 A. That's what he said.

8 Q. Is there any reason Mr. Kookogey could not have  
9 found the 1973 Kinkead/Fisher & Young deed in 1986?

10 A. No.

11 Q. Have you ever been made aware of any timber deed  
12 from Fisher & Young to Carlisle?

13 A. No.

14 Q. Have you ever been aware or made aware, in any  
15 context whatsoever, of Mr. Carlisle paying anyone any money  
16 for timber on the Clough Farm?

17 A. No.

18 Q. Now, I'm going to show you a copy of Exhibit 5.  
19 Before I do, the articles of merger with Matsen Hardwoods  
20 and Fisher & Young Hardwoods were recorded; is that  
21 correct?

22 A. Yes.

23 Q. I'm going to show you Exhibit 5, which is a  
24 timber sales agreement, and who were the parties to that  
25 agreement?



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1 **A.** Exhibit 5, sellers were Robert D. Matson, Joan M.  
2 Matson, Becky J. Matson and Barbara A. Conti.

3 **Q.** And who was the buyer?

4 **A.** Matson Hardwoods, Inc.

5 **Q.** Was that for the timber on the Clough Farm?

6 **A.** If you can agree on what that description  
7 consists of between counsel because I'm not ...

8 **Q.** If you look at the witnesseth clause ...

9 **A.** It does say the Clough Farm, so, yes.

10 **Q.** That document was recorded, is that correct?

11 **A.** Right.

12 **Q.** I'm going to show you Exhibit 6, which is a deed  
13 between Matson Lumber Company and Matson Industries and ask  
14 if this deed was recorded?

15 **A.** Yes.

16 **Q.** Is that a timber deed?

17 **A.** Yes.

18 **Q.** And does the deed identify what timber property  
19 was conveyed or what timber was conveyed?

20 **A.** It has the Clough Farm.

21 **Q.** What was the date of that recording?

22 **A.** December 29, 1989.

23 **Q.** I'm going to show you Exhibit 7 and ask who the  
24 parties to Exhibit 7 were?

25 **A.** Matson Industries, Inc. is the grantor and B & B

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1 Hardwoods Co. is grantee.

2 **Q.** Was that a conveyance of timber?

3 **A.** Yes.

4 **Q.** What property was that conveyance on?

5 **A.** The Clough Farm.

6 **Q.** Was that recorded?

7 **A.** Yes.

8 **Q.** I'm going to show you a copy of Exhibit 10, which  
9 was Mr. Kookoge's letter to Robert Matson dated  
10 October 30, 1987. And in that letter, Attorney Kookoge  
11 indicated, "The ownership of the timber and the rights and  
12 duties set forth in the agreement are in perpetuity and in  
13 general are not in violation of the rule against  
14 perpetuities with one possible exception, that being the  
15 option of Carlisle to purchase the timber if Matson should  
16 sell or change management."

17 Do you agree with that statement?

18 **A.** Yes.

19 **Q.** Is it your understanding that the agreement  
20 between Mrs. Kinkead and Fisher & Young created an interest  
21 in Fisher & Young in the timber in perpetuity?

22 **A.** Yes.

23 **Q.** Is that your understanding, based on your review  
24 of all the documents, of what the understanding of the  
25 parties was?

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1 **A.** Based upon my review of the documents, review of  
2 Mr. Kookogey's file, discussions with Mr. Kookogey and  
3 discussions with Mrs. Squatritti.

4 **MR. FRYLING:** I object to form of the  
5 question. The objection is that the issue -- the timber  
6 interest and perpetuity to Matson Lumber Company has  
7 already been litigated, and Mr. Ging will point out  
8 re-litigation of that issue as required by res judicata by  
9 the 1995 Court litigation.

10 **MR. GING:** Are you willing to stipulate that  
11 Matson owns all the timber that was on the property in  
12 1969?

13 **MR. FRYLING:** We are willing to stipulate

14 that Matson didn't own anything as of April 1st, 1978.

15 **MR. GING:** No further questions.

16 **MR. FRYLING:** I have one follow-up.

#### 17 **EXAMINATION**

18 **BY MR. FRYLING:**

19 **Q.** All of the deeds that Mr. Ging asked you about,  
20 these are the deeds purportedly to be an interest in the  
21 timber on the Clough Farm between various Matson entities.  
22 As I read it, I will refer back to the source deed as  
23 being the deed between Fisher & Young, Inc. and Albert T.  
24 Carlisle; is that correct?  
25

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1 **A.** Well, I'm looking at this one. This one refers  
2 back to the deed from Robert Matson to B & B, so this is --  
3 this one really doesn't have -- they don't really have --  
4 they all relate back to different deeds. They speak for  
5 themselves.

6 **Q.** I guess my question is, these deeds that we are  
7 talking about here either identified a prior deed that you  
8 created for one of the Matson entities as its prior deed in  
9 title ultimately back to the deed between Fisher & Young  
10 and Albert Carlisle?

11 **A.** Well, right, but that just refers back to the  
12 exception and reservation.

13 **Q.** Okay. So, it doesn't refer, if I understand  
14 then, it does not refer to any deed by which any other deed  
15 of what we have already identified that grants Fisher &  
16 Young any interest in the timber and trees other than the  
17 documents we have already talked about, correct?

18 **A.** You asked me what these deeds refer back to, and  
19 they refer back to other deeds in the chain of title.

20 I don't know -- I don't see any of them to refer  
21 specifically to the exception and reservation in the deed  
22 from Fisher & Young to Carlisle.

23 **Q.** Okay. So, there is no reference in these  
24 documents then back to the original deed by which Fisher &  
25 Young acquired any interest in the timber and trees; is

that correct?

**A.** Right, but, you wouldn't see that. Here, it says parcel of land which Marion Kinkead conveyed to Fisher & Young.

Generally you just go back one deed, and since Matson Lumber or Matson Hardwoods acquired this property, technically when you're conveying property, the first thing that you would see in the chain of title might be a reference to the articles of merger, you know, being the same tract of land vested in Matson Hardwoods by this article of merger, and then, somebody would go behind that deed and then behind that deed. You usually only go back one deed. I mean, normally.

MR. FRYLING: That's all I have.

MS. COCO: Never mind.

(At approximately 3:14 p.m. the deposition was concluded. Signature was not waived.)

\*  
\*  
\*

## ERRATA SHEET

I, the undersigned, **JOHN C. DENNISON**, do hereby certify that I have read the foregoing deposition, and to the best of my knowledge, said deposition is true and accurate, with the exception of the corrections, if any, listed below.

PAGE	LINE	CORRECTION AND REASON FOR CHANGE
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COMMONWEALTH OF PENNSYLVANIA

) ) SS

COUNTY OF JEFFERSON )

CERTIFICATE

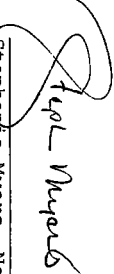
I, Stephanie Myers, a Notary Public in and for the Commonwealth of Pennsylvania do hereby certify that the deponent, **JOHN C. DENNISON**, having been duly sworn to testify to the truth, the whole truth and nothing but the truth; that the foregoing deposition was taken at the time and place stated herein; and that the said deposition was recorded stenographically by me and reduced to typewriting by computer and constitutes a true record of the testimony given by said witness.

I further certify that the inspection, reading and signing of said deposition was not waived by counsel for the respective parties and by the witness.

I further certify that I am not a relative, employee or attorney of any of the parties, or a relative or employee of either counsel, and that I am in no way interested directly or indirectly in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this 21st day of March 2006.

STEPHANIE MYERS - COURT REPORTER

  
Stephanie Myers, Notary Public  
Court Reporter

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